FEDERAL REGISTER

VOLUME 22 NUMBER 28

Washington, Saturday, February 9, 1957

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter III—Foreign and Territorial Compensation

[Dept. Reg. 108.310]

PART 325—ADDITIONAL COMPENSATION IN FOREIGN AREAS

DESIGNATION OF DIFFERENTIAL POSTS

Section 325.11 *Designation of differential posts* is amended as follows, effective on the dates indicated:

1. Effective as of the beginning of the first pay period following February 9, 1957, paragraph (c) is amended by the deletion of the following:

Colombo, Ceylon.
Israel, all posts except Haifa and Tel Aviv and the Israel-held sector of Jerusalem.
Luanda, Angola.

2. Effective as of the beginning of the first pay period following September 22, 1956, paragraph (a) is amended by the addition of the following:

Nha Trang, Viet-Nam.

3. Effective as of the beginning of the first pay period following November 17, 1956, paragraph (a) is amended by the addition of the following:

Little Carter Cay, British West Indies.

4. Effective as of the beginning of the first pay period following February 9, 1957, paragraph (c) is amended by the addition of the following:

Ceylon, all posts.

5. Effective as of the beginning of the first pay period following February 9, 1957, paragraph (d) is amended by the addition of the following:

Luanda, Angola.

(Sec. 102, Part I, E. O. 10000, 13 F. R. 5453; 3 CFR, 1948 Supp.)

Dated: January 31, 1957.

For the Secretary of State.

I. W. CARPENTER, Jr.,
Assistant Secretary-Controller.

[F. R. Doc. 57-1000; Filed, Feb. 8, 1957; 8:47 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

SUBPART—UNITED STATES STANDARDS FOR GRADES OF CANNED ASPARAGUS[1]

On April 3, 1956, a notice of proposed rule making was published in the FEDERAL REGISTER (21 F. R. 2245) regarding a proposed revision of United States Standards for Grades of Canned Asparagus.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the following United States Standards for Grades of Canned Asparagus are hereby promulgated pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., 7 U. S. C. 1621 et seq.).

PRODUCT DESCRIPTION, STYLES, GRADES, AND TYPES

Sec.
52.2541 Identity.
52.2542 Styles of canned asparagus.
52.2543 Grades of canned asparagus.
52.2544 Types of canned asparagus.

FILL OF CONTAINER AND DRAINED WEIGHTS

52.2545 Recommended fill of container.
52.2546 Recommended minimum drained weight.
52.2547 Compliance with recommended minimum drained weights.

SIZE (DIAMETER) OF SPEARS, TIPS, AND POINTS

52.2548 Size (diameter) of spears, tips, and points in canned asparagus.
52.2549 Compliance with single size recommendations.

FACTORS OF QUALITY

52.2550 Ascertaining the grade.
52.2551 Ascertaining the rating for the factors which are scored.
52.2552 Liquor.

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

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FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Federal Register Division, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

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A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

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52.2555 Character.

DEFINITIONS AND EXPLANATIONS

52.2556 Definitions and explanations of terms.

LOT CERTIFICATION TOLERANCES

52.2557 Tolerances for certification of officially drawn samples.

SCORE SHEET

52.2558 Score sheet for canned asparagus.

AUTHORITY: §§ 52.2541 to 52.2558 issued under sec. 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624.

PRODUCT DESCRIPTION, STYLES, GRADES, AND TYPES

§ 52.2541 *Identity.* "Canned asparagus" means the canned product prepared from clean, sound, succulent shoots of the asparagus plant prepared and processed in accordance with good commercial practice as such product is defined in the standard of identity for canned asparagus (§ 51.990 of this chapter, 20 F. R. 9621–9622) issued pursuant to the Federal Food, Drug, and Cosmetic Act.

§ 52.2542 *Styles of canned asparagus.* (a) "Spears" (stalks), which may be peeled or unpeeled, is the style of canned asparagus that consists of the head and adjoining portion of the shoot that is 3¾ inches or more in length.

(b) "Tips" is the style of canned asparagus that consists of the head and adjoining portion of the shoot that is less than 3¾ inches but not less than 2¾ inches in length.

(c) "Points" is the style of canned asparagus that consists of the head and adjoining portion of the shoot that is less than 2¾ inches in length.

(d) "Cut spears" (cut stalks) is the style of canned asparagus that consists of shoots cut transversely into pieces. The recommended minimum percent, by count, of heads in cut spears is given in Table No. 1 of this section.

TABLE No. 1

RECOMMENDED MINIMUM PERCENT, BY COUNT, OF HEADS IN CUT SPEARS

Length of units:	*Percent, by count, of heads*
1¼ inches or less	15
Over 1¼ inches	20

(e) "Bottom cuts" or "cuts—tips removed" is the style of canned asparagus that consists of portions of shoots with heads removed that are cut transversely into pieces.

(f) "Mixed" is the style of canned asparagus consisting of two or more of the foregoing styles.

§ 52.2543 *Grades of canned asparagus.* (a) "U. S. Grade A" or "U. S. Fancy" is the quality of canned asparagus that possesses a good flavor; that possesses a clear liquor; that possesses a good color; that is practically free from defects; that possesses a good character; and that for those factors which are scored in accordance with the scoring system outlined in this section the total score is not less than 85 points: *Provided,* That the canned asparagus may possess a fairly clear liquor and a fairly good color if the total score is not less than 85 points.

(b) "U. S. Grade C" or "U. S. Standard" is the quality of canned asparagus that possesses a fairly good flavor; that possesses a fairly clear liquor; that possesses a fairly good color; that is fairly free from defects; that possesses a fairly good character; and that scores not less than 70 points when scored in accordance with the scoring system outlined in this section.

(c) "Substandard" is the quality of canned asparagus that fails to meet the requirements of U. S. Grade C or U. S. Standard.

§ 52.2544 *Types of canned asparagus.* The type of canned asparagus is not incorporated in the grades of the processed product, since the type of canned asparagus is not a factor of quality for the purpose of these grades. The type of asparagus may be designated in accordance with the following requirements:

(a) "Green" (all green) consists of units of canned asparagus which are typical green, light green, or yellowish green in color.

(b) "Green tipped" consists of canned asparagus spears, tips, and points, of which one-half or more of the unit measured from the tip end is green, light green, or yellowish green in color.

(c) "Green tipped and white" consists of (1) spears, tips, and points of canned asparagus which are typical white or yellowish white in color, and may have green, light green, or yellowish green heads, and the green color may extend to not more than one-half of the length of the stalk measured from the tip end and (2) green tipped and white spears, tips, and points, when cut into units, may consist of a mixture of typical white, yellowish white, green, light green, or yellowish green units.

(d) "White" consists of units of canned asparagus which are typical white or yellowish white in color.

FILL OF CONTAINER AND DRAINED WEIGHTS

§ 52.2545 *Recommended fill of container.* The recommended fill of container for canned asparagus is not incorporated in the grades of the processed product, since fill of container, as such, is not a factor of quality for the purpose of these grades. It is recommended that each container of canned asparagus be filled as full as practicable with asparagus without impairment of quality.

§ 52.2546 *Recommended minimum drained weight.* The minimum drained weight recommendations in Table No. 2 are not incorporated in the grades of the processed product, since drained weight, as such, is not a factor of quality for the purpose of these grades. The drained weight of canned asparagus is determined by emptying the contents of the container upon a United States Standard No. 8 sieve of proper diameter, inclining the sieve to facilitate drainage, and allow to drain for two minutes. The drained weight is the weight of the sieve and the asparagus less the weight of the dry sieve. A sieve 8 inches in diameter is used for the No. 2½ size can (401 x 411) and smaller sizes, and a sieve 12 inches in diameter is used for containers larger than the No. 2½ size can.

§ 52.2547 *Compliance with recommended minimum drained weights.* Compliance with the recommended minimum drained weight for canned asparagus is determined by averaging the drained weights of all of the containers which are representative of a specific lot. Such lot is considered as meeting recommendations, if:

(a) At least one-half of the containers meet the recommended minimum drained weight;

(b) The drained weights of the containers which do not meet the recommended minimum drained weight are within the range of variability of good commercial practice; and

(c) The average drained weight of all of the containers which are representative of the lot does not fall below the minimum recommended drained weight.

TABLE NO. 2

RECOMMENDED MINIMUM DRAINED WEIGHT (IN OUNCES) OF ASPARAGUS

Container size or designation	Container dimensions (inches) water capacity (ounces avoirdupois)		Spears, tips, points (small, medium, large, and blends of these sizes)		Spears, tips, and points (extra large, colossal, giant, or blends including these sizes)		Cut spears, bottom cuts or cuts—tips removed (all sizes)	
	Diameter	Height	Green tipped and white	Green and green tipped	Green tipped and white	Green and green tipped	Green tipped and white	Green
8 oz. tall	2 1/16	3 1/16	5 1/4	5	5 1/4	5	5	4 3/4
8 oz. jar	8.5 oz.		5 1/4	5	5 1/4	5	5	4 3/4
No. 1 picnic	2 1/16	4	7	6 1/4	6 1/2	6	6 1/2	6
127	2 1/16	4 9/16	8	7 1/2	7 3/4	7 1/4	7 3/4	7 1/4
No. 300	3	4 7/16	9 1/2	8 3/4	9	8	9	8 1/2
No. 300 x 403	3	4 9/16	9 3/4	9	9 1/4	8 1/4	9 1/4	8 3/4
No. 300 cylinder	3	5 9/16		11		10 1/2		
No. 1 tall	3 1/16	4 1 1/16	10 3/4	9 3/4	10 1/2	9 1/4	10 1/4	9 1/4
No. 303	3 3/16	4 1/16	10 3/4	9 3/4	10 1/2	9 1/4	10 1/4	9 1/4
No. 303 jar	17.8 oz.		10 3/4	9 3/4	10 1/2	9 1/4	10 1/4	9 1/4
No. 2	3 7/16	4 9/16	13 1/2	12 1/4	12 3/4	11 3/4	12 3/4	11 3/4
No. 2 1/2 (round)	4 1/16	4 1 1/16	19 1/2	17 3/4	18 1/2	17 1/4	18 1/2	16 3/4
No. 2 1/2 jar	29.5 oz.		19 1/4	17 1/2	18 1/4	17	18 1/2	16 3/4
No. 5 squat	6 3/16	4 3/16	43	39	41	38	42	38
No. 10	6 3/16	7	64 1/2	63	64 1/2	60 1/4	64 1/2	60 1/4
131 Z	14.5 oz.		8 3/4	8	8 1/4	7 1/2		

SIZE (DIAMETER) OF SPEARS, TIPS, AND POINTS

§ 52.2548 *Size (diameter) of spears, tips, and points in canned asparagus.* The size (diameter) of asparagus spears, tips, and points in canned asparagus is determined by measuring the largest diameter across the base at right angles to the longitudinal axis of the unit. Units compressed in processing should be restored to their approximate original contour before sizing. Asparagus spears longer than 5 inches are measured at a point 5 inches from the top of the spear. Units 5 inches in length and less are measured at the base or largest cut end of the unit.

§ 52.2549 *Compliance with single size recommendations.* Canned asparagus spears, tips, and points will be considered as meeting a designated size when not more than 20 percent, by count, of all the units are of the next size smaller or the next size larger than the diameter range of the particular size designation.

TABLE NO. 3

SIZES (DIAMETER) OF ASPARAGUS SPEARS, TIPS, AND POINTS IN CANNED ASPARAGUS

Word designation	Diameter (16ths of inch)
Small	Approximately 9/16.
Medium	9/16 to 13/16.
Large	13/16 to 19/16.
Extra Large or Mammoth	19/16 to 13/16.
Colossal	13/16 to 19/16.
Giant	19/16 and over.
Blend of Sizes	A mixture of two or more of the foregoing sizes.

FACTORS OF QUALITY

§ 52.2550 *Ascertaining the grade—*(a) *General.* In addition to considering other requirements outlined in the standards, the following quality factors are evaluated in ascertaining the grade of the product:

(1) *Factor not rated by score points.* (i) Flavor.

(2) *Factors rated by score points.* (i) The relative importance of each factor which is rated is expressed numerically on the scale of 100. The maximum number of points that may be given each such factor is:

Factors:	Points
Liquor	10
Color	20
Defects	30
Character	40
Total Score	100

(ii) "Good flavor" means that the product has a good, characteristic normal flavor and odor and is free from objectionable flavors and objectionable odors of any kind.

(iii) "Fairly good flavor" means that the product may be lacking in good flavor and odor but is free from objectionable flavors and objectionable odors of any kind.

§ 52.2551 *Ascertaining the rating for the factors which are scored.* The essential variations within each factor which is rated by score points are so described that the value may be ascertained for such factors and expressed numerically. The numerical range within each such factor is inclusive (for example, "17 to 20 points" means 17, 18, 19, or 20 points).

§ 52.2552 *Liquor*—(a) *(A) classification.* Canned asparagus that possesses a clear liquor may be given a score of 9 or 10 points. "Clear liquor" means that the liquor may possess a typical yellow or green color and is fairly free from suspended material and sediment.

(b) *(C) classification.* If the canned asparagus possesses a fairly clear liquor a score of 7 or 8 points may be given. "Fairly clear liquor" means that the liquor may be cloudy but not excessively cloudy or may possess an accumulation of sediment which may be slightly gray or slightly brown but is not seriously objectionable and is not off color.

(c) *(SStd.) classification.* Canned asparagus that fails to meet the requirements of paragraph (b) of this section may be given a score of 0 to 6 points and shall not be graded above Substandard, regardless of the total score for the product (that is a limiting rule).

§ 52.2553 *Color*—(a) *General.* The color of asparagus in canned asparagus is based on the type and style of asparagus and the characteristic and predominant color of the units.

(b) *(A) classification.* Canned asparagus that possesses a good color may be given a score of 17 to 20 points. "Good color" has the following meanings with respect to the following types and styles of canned asparagus:

(1) *Spears, tips, or points*—(i) *Green.* The units possess a good, characteristic, green, light green, or yellowish green color typical of well developed asparagus, and the bottom portion of not more than 10 percent, by count, of the units, or one unit, whichever is larger, may possess typical white or yellowish white color not to exceed one-eighth of the length of the unit.

(ii) *Green tipped.* The units possess a good, characteristic, green, light green, or yellowish green color with typical white or yellowish white color at the base ends, typical of well developed asparagus, and not more than 20 percent, by count, of the units may possess typical white or yellowish white color in excess of one-half of the length of the unit or may be all green.

(iii) *Green tipped and white.* The units possess a good, characteristic, white or yellowish white color, and may possess green, light green, or yellowish green heads and adjacent areas, typical of well developed asparagus, and not more than 20 percent, by count, of the units may possess green, light green, or yellowish green heads and adjacent areas exceeding one-half of the length of the unit.

(iv) *White.* The units possess a good, characteristic, white or yellowish white color typical of well developed asparagus, and not more than 10 percent, by count, of the units, or one unit, whichever is larger, may possess green, light green, or yellowish green heads and adjacent areas not to exceed one-half of the length of the unit.

(2) *Cut spears, bottom cuts or cuts—tips removed, and mixed*—(i) *Green.* The units possess a good, characteristic, green, light green, or yellowish green color typical of well developed asparagus, and not more than 10 percent, by count, of the units may be green and white or white: *Provided,* That not more than 2 percent, by count, of all the units may be white.

(ii) *Green tipped and white or white.* The units possess a good, characteristic color typical of well developed green tipped and white or white asparagus.

(c) *(C) classification.* If the canned asparagus possesses a fairly good color, a score of 14 to 16 points may be given. "Fairly good color" has the following meanings with respect to the following types and styles of canned asparagus:

(1) *Spears, tips, or points*—(i) *Green.* The units possess a fairly good, characteristic, green, light green, or yellowish green color typical of fairly well developed asparagus and the bottom portion of not more than 20 percent, by count, of the units may possess typical white or yellowish white color not to exceed one-fourth of the length of the unit.

(ii) *Green tipped.* The units possess a fairly good, characteristic, green, light green, or yellowish green color with typical white or yellowish white color at the base ends, typical of fairly well de-

veloped asparagus, and not more than 50 percent, by count, of the units may possess typical white or yellowish white color in excess of one-half of the length of the unit, or may be all green.

(iii) *Green tipped and white.* The units possess a fairly good, characteristic, white or yellowish white color and may possess green, light green, or yellowish green heads and adjacent areas typical of fairly well developed asparagus, and not more than 50 percent, by count, of the units may possess green, light green, or yellowish green heads and adjacent areas in excess of one-half of the length of the unit.

(iv) *White.* The units possess a fairly good, characteristic, white or yellowish white color typical of fairly well developed white asparagus, and not more than 20 percent, by count, of the units may possess green, light green, or yellowish green heads and adjacent areas not to exceed one-half of the length of the unit.

(2) *Cut spears, bottom cuts or cuts—tips removed, and mixed*—(i) *Green.* The units possess a fairly good, characteristic, green, light green, or yellowish green color typical of fairly well developed asparagus and not more than 20 percent, by count, of the units may be green and white or white: *Provided,* That not more than 5 percent, by count, of all the units may be white.

(ii) *Green tipped and white or white.* The units possess a fairly good, characteristic color typical of fairly well developed green tipped and white or white asparagus.

(d) *(SStd.) classification.* Canned asparagus that fails to meet the requirements of paragraph (c) of this section or is definitely off color may be given a score of 0 to 13 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.2554 *Defects*—(a) *General.* The factor of defects refers to the degree of freedom from grit or silt, loose material, shattered heads, poorly cut units, damaged units, and seriously damaged units.

(1) "Grit or silt" means sand or any other particle of earthy material.

(2) "Loose material" means shattered asparagus material and cut or broken pieces which are less than three-eighth inch in length.

(3) "Shattered head" means any unit with the asparagus head broken or shattered to the extent that the appearance is seriously affected.

(4) "Misshapen" means any spear, tip, or point that is badly crooked, or any unit that is seriously affected in appearance by doubles or other malformations.

(5) "Poorly cut" means a unit that has a very ragged, stringy, or frayed edge or edges, or a unit that is partially cut, or is cut at an angle of less than approximately 45 degrees.

(6) "Damaged" means damaged by discoloration, mechanical injury, or damaged by other means to the extent that the appearance or edibility of the unit is materially affected.

(7) "Seriously damaged" means damaged to such an extent that the appearance or edibility of the unit is seriously affected.

(b) *(A) classification.* Canned asparagus that is practically free from defects may be given a score of 25 to 30 points. "Practically free from defects" means that no grit or silt may be present that affects the appearance or edibility of the product; that loose material may be present that does not materially affect the appearance of the product; and that with respect to the following styles of canned asparagus:

(1) *Spears, tips, and points.* There may be present with respect to green and green tipped types not more than 10 percent, and with respect to green tipped and white and white types not more than 15 percent, by count, of units with shattered heads, misshapen units and poorly cut units, and damaged and seriously damaged units: *Provided,* That not more than 3 percent, by count, of the units may be seriously damaged, or one unit in a single container may be seriously damaged if such unit exceeds the allowance of 3 percent: *Provided,* That in all of the containers comprising the sample such damaged units do not exceed an average of 3 percent, by count, of the total number of units.

(2) *Cut spears, bottom cuts or cuts—tips removed, and mixed.* There may be present for the applicable style not more than 10 percent, by count, of units with shattered heads, misshapen units and poorly cut units, and damaged and seriously damaged units: *Provided,* That not more than 2 percent, by count, of the units may be seriously damaged or one unit in a single container may be seriously damaged if such unit exceeds the allowance of 2 percent: *Provided,* That in all of the containers comprising the sample such damaged units do not exceed an average of 2 percent, by count, of the total number of units.

(c) *(C) classification.* If the canned asparagus is fairly free from defects, a score of 21 to 24 points may be given. Canned asparagus that falls into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that not more than a trace of grit or silt may be present that affects the appearance or edibility of the product; that loose material may be present that does not seriously affect the appearance of the product; and that with respect to the following styles of canned asparagus:

(1) *Spears, tips, and points.* There may be present with respect to green and green tipped types not more than 20 percent, and with respect to green tipped and white and white types not more than 30 percent, by count, of units with shattered heads, misshapen units, and poorly cut units, and damaged and seriously damaged units: *Provided,* That not more than 10 percent, by count, of the units may be seriously damaged, or one unit in a single container may be seriously damaged if such unit exceeds the allowance of 10 percent: *Provided,* That in all of the containers comprising the sample such damaged units do not exceed an average of 10 percent, by count, of the total number of units.

(2) *Cut spears, bottom cuts or cuts—tips removed, and mixed.* There may be present for the applicable style not more than 20 percent, by count, of units with shattered heads, misshapen units and poorly cut units, and damaged and seriously damaged units: *Provided,* That not more than 7 percent, by count, of all the units may be seriously damaged.

(d) *(SStd.) classification.* Canned asparagus that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.2555 *Character*—(a) *General.* The factor of character refers to the degree of development of the head and bracts and to the tenderness and texture of the unit.

(1) "Well developed" means that the appearance of the head is not materially affected by a seedy appearance, and is practically compact.

(2) "Fairly well developed" means that the head may show a seedy appearance over the surface of the head and the head and bracts may be elongated but not so developed or elongated as to give a definitely spread or branching appearance.

(b) *(A) classification.* Canned asparagus that possesses a good character may be given a score of 34 to 40 points. "Good character" has the following meanings with respect to the following styles and types of canned asparagus:

(1) *Spears, tips, and points.* Not less than 85 percent, by count, of the heads are well developed, and the remaining units are at least fairly well developed, and with respect to green and green tipped types not more than 10 percent, and with respect to green tipped and white and white types not more than 20 percent, by count, of the units, or one unit in a container if such unit exceeds the allowances provided for the respective type, may be tough.

(2) *Cut spears and mixed.* Not less than 50 percent, by count, of the heads are well developed, and the remainder are at least fairly well developed, and with respect to green and green tipped types not more than 10 percent, and with respect to green tipped and white and white types not more than 20 percent, by count, of the units may be tough.

(3) *Bottom cuts or cuts—tips removed.* With respect to green and green tipped types not more than 10 percent, and with respect to green tipped and white and white types not more than 33⅓ percent, by count, of the units may be tough.

(c) *(C) classification.* If the canned asparagus possesses a fairly good character, a score of 28 to 33 points may be given. Canned asparagus that falls into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly good character" has the following meanings with respect to the following styles and types of canned asparagus:

(1) *Spears, tips, and points.* Not less than 90 percent, by count, of the heads are at least fairly well developed, and the remaining units may fail to meet the requirements for fairly well developed heads, and with respect to green and green tipped types not more than 25 percent, and with respect to green tipped and white and white types not more than 50 percent, by count, of the units may be tough.

(2) *Cut spears and mixed.* Not less than 90 percent, by count, of all the heads are at least fairly well developed, and the remainder may fail to meet the requirements for fairly well developed heads, and with respect to green and green tipped types not more than 25 percent, and with respect to green tipped and white and white types not more than 50 percent, by count, of the units may be tough.

(3) *Bottom cuts or cuts—tips removed.* With respect to green and green tipped types not more than 25 percent, and with respect to green tipped and white and white types not more than 50 percent, by count, of the units may be tough.

(d) *(SStd.) classification.* Canned asparagus that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 27 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

DEFINITIONS AND EXPLANATIONS

§ 52.2556 *Definitions and explanations of terms*—(a) *Head.* Head in cut spears means the tip and which has been cut from an asparagus shoot which is ⅝ inch or more in length with respect to the green type and which is ⅜ inch or more length with respect to green tipped and white and white types, or the upper portion of a spear which possesses a substantial amount of head material which has been cut from near the tip end and which is approximately the same length as the other cut units.

(b) *Unit.* Unit means any individual portion of an asparagus shoot ⅜ inch or more in length in canned asparagus.

(c) *Percent, by count, of heads.* Percent, by count, of heads means the percent determined by averaging the percent, by count, of heads in all of the containers comprising the sample.

(d) *Tough unit*—(1) *Spears, tips, and points.* Tough unit means a unit which is not cut through in 5 seconds or less when tested by means of the fiberometer and which possesses fibrous material which is materially objectionable upon eating. When tested by means of the fiberometer the test is made at a point 1 inch from the cut end with respect to the green type and at a point 1½ inches from the cut end with respect to the green tipped type, and at the midpoint of the unit with respect to the green tipped and white and white types.

(2) *Cut spears, bottom cuts or cuts—tips removed, and mixed, containing cut spears and bottom cuts or cuts—tips removed.* Tough unit means a unit which possesses fibrous material which is materially objectionable upon eating.

(e) *Asparagus fiberometer.* The cutting wire of the fiberometer shall be 0.031 inch diameter stainless steel wire and is mounted in a metal frame having an overall weight of 3 pounds avoirdupois. The slots in the block supporting the asparagus unit to be tested shall be not less than 0.039 inch nor more than 0.042 inch in width.

LOT CERTIFICATION TOLERANCES

§ 52.2557 *Tolerances for certification of officially drawn samples.* (a) When certifying samples that have been officially drawn and which represent a specific lot of canned asparagus the grade for such lot will be determined by averaging the total scores of the containers comprising the sample, if (1) such containers meet all of the applicable grade requirements of the factors of quality that are not rated by score points, (2) all containers comprising the sample meet all applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act and in effect at the time of the aforesaid certification, and (3) with respect to those factors which are rated by score points:

(i) Not more than one-sixth of the containers fails to meet the grade indicated by the average of such total scores;

(ii) None of the containers falls more than 4 points below the minimum score for the grade indicated by the average of such total scores;

(iii) None of the containers falls more than one grade below the grade indicated by the average of such total scores; and

(iv) The average score of all containers for any factor subject to a limiting rule is within the score range of that factor for the grade indicated by the average of the total scores of the containers comprising the sample.

SCORE SHEET

§ 52.2558 *Score sheet for canned asparagus.*

Number, size, and kind of container	
Label	
Container mark or identification	
Net weight (ounces)	
Vacuum (inches)	
Drained weight (ounces)	
Type	
Style	
Size or sizes (Spears, tips, and points)	
Length of cut	
Heads (cut) (percent, by count)	

Factors	Score points		
Liquor	10	(A)	9-10
		(C)	7-8
		(SStd.) [1]	0-6
Color	20	(A)	17-20
		(C)	14-16
		(SStd.) [1]	0-13
Defects	30	(A)	25-30
		(C) [1]	21-24
		(SStd.) [1]	0-20
Character	40	(A)	34-40
		(C) [1]	28-33
		(SStd.) [1]	0-27
Total score	100		

Flavor (A, C, or SStd.)	
Grade	

[1] Indicates limiting rule.

The United States Standards for Grades of Canned Asparagus (which is the fifth issue) contained in this subpart shall become effective 30 days after publication hereof in the FEDERAL REGISTER, and will thereupon supersede the United States Standards for Grades of Canned Asparagus which have been in effect since May 1, 1945.

Dated: February 6, 1957.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F. R. Doc. 57-1017; Filed, Feb. 8, 1957; 8:50 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

Subchapter A—Marketing Orders

[Navel Orange Reg. 104, Amdt. 1]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914; 21 F. R. 4707), regulating the handling of navel oranges grown in Arizona and designated part of California, effective September 22, 1953, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of navel oranges grown in Arizona and designated part of California.

Order, as amended. The provisions in paragraph (b) (1) (i) and (ii) of § 914.404 (Navel Orange Regulation 104, 22 F. R. 695) are hereby amended to read as follows:

(i) District 1: 600,600 cartons;

(ii) District 2: 346,500 cartons.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: February 6, 1957.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 57-1009; Filed, Feb. 8, 1957; 8:49 a. m.]

Subchapter B—Prohibition of Imported Commodities

PART 1065—TOMATOES

IMPORT RESTRICTIONS

Pursuant to the requirement contained in section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), the following restrictions are hereby imposed on all importations of tomatoes into the United States:

§ 1065.2 *Tomato Regulation No. 2*—(a) *Import restrictions.* During the period from February 14, 1957, to March 9, 1957, both dates inclusive, and subject to Part 1060 of this subchapter (19 F. R. 7707, 8012) applicable to the importation of listed commodities and the requirements of this section, no person shall import:

(1) Any tomatoes which are "turning" or of greater maturity unless such tomatoes are of a diameter greater than 2⅛ inches, and meet the requirements of 85 percent U. S. No. 1, or better, grade; or

(2) Any tomatoes which are of less maturity than "turning" unless such tomatoes are of a diameter greater than 2⅛ inches and meet the requirements of U. S. Combination, or better, grade except that tomatoes of less maturity than "turning" which are of a diameter greater than 2$^{2}/_{32}$ inches may be handled if they meet the requirements of the U. S. No. 2, or better, grade.

(b) *Lot classification.* For purposes of this regulation, any lot of tomatoes containing more than ten (10) percent of "turning" tomatoes shall be classified as "turning" tomatoes.

(c) *Minimum quantities.* Any importation which, in the aggregate, does not exceed 300 pounds may be imported without regard to the provisions of paragraph (a) of this section.

(d) *Plant quarantine.* No provisions of this section shall supersede the restrictions or prohibitions on tomatoes under the Plant Quarantine Act of 1912.

(e) *Inspection and certification.* (1) The Federal or the Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated, pursuant to § 1060.4 (a) of this subchapter, as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of tomatoes that are imported, or to be imported into the United States under the provisions of section 8e of the act.

(2) Inspection and certification by the Federal or the Federal-State Inspection Service of each lot of imported tomatoes is required pursuant to § 1060.3 of this subchapter and this section. Each such lot shall be made available and accessible for inspection. Such inspection and certification will be made available in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (Part 5 of this title; 21 F. R. 9553). Since inspectors may not be stationed in the immediate vicinity of some smaller ports of entry, importers of uninspected and uncertified tomatoes should make advance arrangements for inspection by ascertaining whether or not there is an inspector located at their particular port of entry. For all ports of entry where an inspection office is not located, each importer must give the specified advance notice to the applicable office listed below prior to the time the tomatoes will be imported.

Ports; Office; Advance Notice

All Texas points; W. T. McNabb, 222 McClendon Building, 305 East Jackson Street, P. O. Box 111, Harlingen, Tex. (Tel. Garfield 3-5644); 1 day.

All Arizona points; R. H. Bertelson, Room 202, Trust Building, 305 American Avenue, P. O. Box 1646, Nogales, Ariz. (Tel. 484); 1 day.

All California points; Carley D. Williams, 284 Wholesale Terminal Building, 784 South Central Avenue, Los Angeles 21, Calif. (Tel. Vandike 8756); 3 days.

All Florida points; Lloyd W. Boney, Room 4, Dade County Growers Market, 1200 Northwest 21st Terrace, Miami 42, Fla. (Tel. Franklin 1-6932); 3 days.

All other points; E. E. Conklin, Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, AMS United States Department of Agriculture, Washington 25, D. C. (Tel. Republic 7-4142 Ext. 5870); 3 days.

(3) Inspection certificates shall cover only the quantity of tomatoes that is being imported at a particular port of entry by a particular importer.

(4) The inspections performed, and certificates issued, by the Federal or Federal-State Inspection Service shall be in accordance with the rules and regulations of the Department governing the inspection and certification of fresh fruits, vegetables, and other products (Part 51 of this title). The cost of any inspection and certification shall be borne by the applicant therefor.

(5) Each inspection certificate issued with respect to any tomatoes to be imported into the United States shall set forth, among other things:

(i) The date and place of inspection;

(ii) The name of the shipper, or applicant;

(iii) The name of the importer (consignee);

(iv) The commodity inspected;

(v) The quantity of the commodity covered by the certificate;

(vi) The principal identifying marks on the containers;

(vii) The railroad car initials and number, the truck and trailer license number, the name of the vessel, or other identification of the shipment; and

(viii) The following statement, if the facts warrant: Meets U. S. Import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937.

(6) The following shipping point tolerances, applicable to the U. S. No. 1, the U. S. Combination, and the U. S. No. 2 grades, respectively, shall apply to all inspections performed on tomatoes prior to or upon entry into the United States:

(i) *U. S. No. 1.* "At shipping point (or in shipments from points outside the continental United States when inspected at points of entry) not more than a total of 10 percent, by count, for tomatoes in any lot which fail to meet the requirements of this grade: *Provided,* That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing very serious damage, and including in this latter amount not more than 1 percent for tomatoes which are soft or affected by decay";

(ii) *U. S. Combination.* "At shipping point (or in shipments from points outside the continental United States when inspected at points of entry) not more than a total of 10 percent, by count, for tomatoes in any lot which fail to meet the requirements of the U. S. No. 2 grade: *Provided,* That not more than one-tenth of this amount, or 1 percent, shall be allowed for tomatoes which are soft or affected by decay;" and

(iii) *U. S. No. 2.* "At shipping point (or in shipments from points outside the continental United States when inspected at points of entry) not more than a total of 10 percent, by count, for tomatoes in any lot which fail to meet the requirements of this grade: *Provided,* That not more than one-tenth of this amount, or 1 percent, shall be allowed for tomatoes which are soft or affected by decay."

(f) *Definitions.* (1) The terms "U. S. No. 1", "U. S. Combination", "U. S. No. 2", and "turning" shall have the same meaning assigned these terms in the United States Standards for Fresh Tomatoes (21 F. R. 9559). "Turning" means that there is at least a definite break in color to yellow or pink at the blossom end but not more than one-half of the surface, in the aggregate, is yellow or pink.

(2) All other terms have the same meaning as when used in Part 1060 of this subchapter applicable to the importation of listed commodities.

It is hereby found that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this regulation beyond that herein specified (5 U. S. C. 1001 et seq.) in that (i) the requirements established by this import regulation are issued pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), which makes such regulation mandatory; (ii) the same regulations will be in effect on February 7, 1957, on domestic shipments of tomatoes under Marketing Agreement No. 125 and Order No. 45 (7 CFR 945.303; 22 F. R. 757); (iii) compliance with this tomato import regulation should not require any special preparation by importers which cannot be completed by the effective date; (iv) notice hereof in excess of three days, the minimum that is prescribed by said section 8e, is given with respect to this tomato import regulation; (v) such notice is hereby determined, under the circumstances, to be reasonable; and (vi) the regulations hereby established for tomatoes that may be imported into the United States are equivalent or comparable to those imposed upon domestic tomatoes under the aforesaid marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c. Interprets or applies Sec. 401, 68 Stat. 906, 1047; 7 U. S. C. 608e)

Dated: February 6, 1957.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 57-1021; Filed, Feb. 8, 1957; 8:50 a. m.]

[Navel Orange Reg. 105]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 914.405 *Navel Orange Regulation 105*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914; 21 F. R. 4707), regulating the handling of navel oranges grown in Arizona and designated part of California, effective September 22, 1953, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Navel Orange Administrative Committee held an open meeting on February 7, 1957, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date hereof.

(b) *Order.* (1) The quantity of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., February 10, 1957, and ending at 12:01 a. m., P. s. t., February 17, 1957, is hereby fixed as follows:

(i) District 1: 508,200 cartons;
(ii) District 2: 415,800 cartons;
(iii) District 3: Unlimited movement;
(iv) District 4: Unlimited movement.

(2) All navel oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: February 8, 1957.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 57-1087; Filed, Feb. 8, 1957; 11:41 a. m.]

PART 945—TOMATOES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

EDITORIAL NOTE: In Federal Register Document 57-918, published at page 757 of the issue for Thursday, February 7, 1957, "§ 945.302" should be designated "§ 945.303".

[Lemon Reg. 673]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 953.780 *Lemon Regulation 673*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 20 F. R. 8451; 21 F. R. 4393), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of lemons, grown in the State of California or in the State of Arizona, are currently subject to regulation pursuant to said amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Lemon Administrative Committee on February 6, 1957; such meeting was held, after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time thereof.

(b) *Order.* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., February 10, 1957, and ending at 12:01 a. m., P. s. t., February 17, 1957, is hereby fixed as follows:

(i) District 1: 13,950 cartons;
(ii) District 2: 162,750 cartons;
(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: February 7, 1957.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 57-1068; Filed, Feb. 8, 1957; 8:56 a. m.]

[957.315, Amdt. 2]

PART 957—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

LIMITATION OF SHIPMENTS

Findings. (a) Pursuant to Marketing Agreement No. 98 and Order No. 57, as

amended (7 CFR Part 957), regulating the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Idaho-Eastern Oregon Potato Committee, established pursuant to said marketing agreement and order as amended, and upon other available information, it is hereby found that the amendment to the limitation of shipments, as hereinafter provided, will tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U. S. C. 1001 et seq.) in that (i) the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, (ii) more orderly marketing in the public interest, than would otherwise prevail, will be promoted by regulating the shipment of potatoes, in the manner set forth below, on and after the effective date of this amendment, (iii) compliance with this amendment will not require any special preparation on the part of handlers which cannot be completed by the effective date, (iv) reasonable time is permitted, under the circumstances, for such preparation, and (v) information regarding the committee's recommendations has been made available to producers and handlers in the production area.

Order, as amended. The provisions of paragraph (b) (1) and (5) of § 957.315, as amended, (21 F. R. 7480, 9165) are hereby amended to read as follows:

(1) During the period from February 11, 1957, to May 31, 1957, both dates inclusive, no handler shall ship potatoes of any variety unless such potatoes are generally "fairly clean", which means that at least 90 percent of such potatoes are "fairly clean", and in addition

(i) If they are of the Kennebec variety such potatoes meet the requirements of U. S. No. 2, or better, grade, 2 inches minimum diameter or 4 ounces minimum weight,

(ii) If they are of the red skinned varieties, such potatoes meet the requirements of the U. S. No. 2, or better grade, 1⅞ inches minimum diameter, and

(iii) If they are of any other variety, such potatoes (*a*) meet the requirements of the U. S. No. 2, or better, grade, 6 ounces minimum weight, or (*b*) meet the requirements of the U. S. No. 1, or better, grade, Size A, 2 inches minimum diameter or 4 ounces minimum weight,

as such terms, grades, and sizes are defined in the United States Standards for Potatoes (§§ 51.1540 through 51.1559 of this title), including the tolerances set forth therein.

* * * * *

(5) The limitations set forth in subparagraphs (1) and (2) of this paragraph shall not be applicable to shipments of potatoes for the following purposes: (i) As certified seed potatoes; (ii) export: *Provided,* That no handler shall ship potatoes for export which do not meet the requirements of the U. S. No. 2, or better grade, 1½ inches minimum diameter; (iii) canning, freezing, dehydration or manufacture or conversion into starch, flour, meal, or alcohol; (iv) charity; and (v) potato chipping: *Provided,* That shipments of potatoes for potato chipping shall meet the requirements of U. S. No. 2, or better grade, 2 inches minimum diameter or 4 ounces minimum weight.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: February 6, 1957, to become effective February 11, 1957.

[SEAL] S. R. SMITH,
Director,
Fruit and Vegetable Division.

[F. R. Doc. 57-1055; Filed, Feb. 8, 1957; 8:56 a. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

Subchapter C—Interstate Transportation of Animals and Poultry

[B. A. I. Order 309, Amdt. 12]

PART 73—SCABIES IN CATTLE

AREAS QUARANTINED BECAUSE OF SCABIES

Pursuant to the provisions of sections 1 and 3 of the act of March 3, 1905, as amended (21 U. S. C. 123, 125), sections 1 and 2 of the act of February 2, 1903, as amended (21 U. S. C. 111-113, 120), and section 7 of the act of May 29, 1884, as amended (21 U. S. C. 117), § 73.0 of Part 73, as amended, Subchapter C, Chapter I, Title 9, Code of Federal Regulations (21 F. R. 9244, 10265, 10471), is hereby further amended to read as follows:

§ 73.0 *Notice and quarantine.* Notice is hereby given that cattle in Colorado are affected with scabies, a contagious, infectious, and communicable disease, and Bent, Crowley, Las Animas, Otero, and Prowers Counties are hereby quarantined because of said disease.

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment includes Prowers County, Colorado, within the areas quarantined because of scabies in cattle. Part 73, as amended, Subchapter C, Chapter I, Title 9, Code of Federal Regulations, contains the regulations pertaining to the interstate movement of cattle from such quarantined areas.

The amendment imposes certain further restrictions necessary to prevent the spread of scabies in cattle, and must be made effective immediately to accomplish its purpose in the public interest. Accordingly, under section 4 of the Administrative Procedure Act (5 U. S. C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

(Sec. 7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, sec. 1, 3, 33 Stat. 1264, as amended, 1265, as amended; 21 U. S. C. 111-113, 117, 120, 123, 125)

Done at Washington, D. C. this 5th day of February 1957.

[SEAL] M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F. R. Doc. 57-1023; Filed, Feb. 8, 1957; 8:51 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

[Civil Air Regs., Amdt. 43-4]

PART 43—GENERAL OPERATION RULES

VFR MINIMUMS WITHIN A CONTROL ZONE FOR FLIGHTS ISSUED A TRAFFIC CLEARANCE

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 6th day of February 1957.

Part 60 of the Civil Air Regulations contains the air traffic rules governing the operation of aircraft. Section 60.31 currently authorizes air traffic control to permit flight within a control zone when the flight and ground visibility are below the specified three-mile minimum. This provision was intended to permit a pilot to fly from a control zone to an area outside of controlled airspace in which the visibility minimum for VFR flight is one mile. Part 43 prohibits a pilot from flying an aircraft under instrument flight rules unless he holds a valid instrument rating issued by the Administrator and unless he satisfies certain recent flight experience requirements.

It has come to the Board's attention that some pilots who are not rated to fly their aircraft solely by reference to instruments were obtaining a traffic clearance and flying through solid overcast or in conditions of restricted visibility and, consequently, were a hazard to themselves and others. In order to clarify the Board's intention that such flights not be conducted, certain amendments to the Civil Air Regulations were proposed in Draft Release 56-7, (21 F. R. 1748) "VFR minimums within a Control Zone for Flights Issued a Traffic Clearance." The foregoing draft release proposed to establish in Part 60 specific weather minimums below which VFR flight could not be conducted. In addition, amendments to §§ 43.65 and 43.68 (d) of Part 43 were proposed to make it clear that these sections are intended to prohibit a non-instrument-rated pilot, as well as an instrument-rated pilot who has not met the recent experience requirements for instrument flight, from operating aircraft in weather conditions

below the minimums prescribed in Part 60 for VFR flight.

Interested persons have been afforded an opportunity to participate in the making of these amendments (21 F. R. 1748), and due consideration has been given to all relevant matters.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 43 of the Civil Air Regulations (14 CFR Part 43, as amended) effective March 15, 1957.

1. By amending § 43.65 to read as follows:

§ 43.65 *Instrument flight limitations.* No person shall pilot an aircraft under instrument flight rules or in weather conditions less than the minimums prescribed for flight under visual flight rules unless he holds a currently effective instrument rating issued by the Administrator.

2. By amending the first sentence of paragraph (d) of § 43.68 by inserting after the word "rules" and before the word "unless" the words "or in weather conditions less than the minimums prescribed for flight under visual flight rules".

(Sec. 205, 52 Stat. 984, 49 U. S. C. 425. Interprets or applies secs. 601, 602, 610, 52 Stat. 1007, 1008, 1012, as amended; 49 U. S. C. 551, 552, 560)

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN, *Secretary.*

[F. R. Doc. 57-1053; Filed, Feb. 8, 1957; 8:52 a. m.]

[Civil Air Regs., Amdt. 60-2]

PART 60—AIR TRAFFIC RULES

VISUAL FLIGHT RULE (VFR) MINIMUMS WITHIN CONTROL ZONES FOR FLIGHTS WITH TRAFFIC CLEARANCE, AND SPEED CONTROL AND COMMUNICATION RULES IN HIGH DENSITY AIR TRAFFIC ZONES

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 6th day of February 1957.

Part 60 of the Civil Air Regulations contains the visibility and distance from cloud minimums for VFR flights within a control zone. Where a traffic clearance has been issued, an aircraft may be operated at lower minimums than when one is not issued; however, current regulations do not specify what the reduced visibility and distance from cloud minimums shall be when such air traffic clearance is issued. The Board proposed to clarify this situation in Draft Release 56-7 (21 F. R. 1743).

The requirements of Part 60 for VFR flights in control zones do not distinguish between control zones of varying traffic densities. In order to determine whether special limitations should be applied in Part 60 for areas in the vicinity of airports having unusually high traffic densities, Special Civil Air Regulation SR-408A was promulgated by the Board. This special regulation delegated to the Administrator sufficient authority to permit him to designate a "high density air traffic zone" in the Washington, D. C. area and to establish special operating rules in the zone on a temporary basis. These special rules were designed to facilitate movement of traffic in the zone under VFR conditions in a safer and more efficient manner. SR-408A terminated on July 31, 1956. As a result of the experience gained under SR-408A, a notice of proposed rule making was published as Draft Release 56-22 (21 F. R. 6302), "Speed Control and Communication Rules for Certain High Density Airports," which contained proposals for the addition to Part 60 of certain provisions especially applicable to high density areas.

Certain matters set forth in Draft Releases 56-7 and 56-22 were, pursuant to notice, the subject of oral argument before the Board on January 14, 1957.

The objective of Draft Release 56-7 was to establish specific visibility and distance from cloud minimums below which VFR flight in a control zone would be prohibited. It was proposed to establish one mile as the visibility minimum for a VFR flight in a control zone (one-half mile exception if the restriction to visibility were of a local nature) and to require that all VFR flights remain "clear of clouds."

The views expressed by the interested parties, both in written comment and oral argument, varied from the belief that the weather minimums proposed by the Board were unnecessarily and unduly restrictive, particularly with respect to general aviation, to the belief that the Board's proposal did not go far enough in the way of imposing restrictions on VFR flight within control zones.

After careful consideration of all of the views expressed on this subject, the Board has concluded that with one minor exception the proposal as contained in Draft Release 56-7 is not unduly burdensome and is necessary in the interest of safety. In fact, the Board has already established by regulation the principle that in uncontrolled airspace a minimum of one-mile visibility is necessary in order that a VFR pilot may properly control the attitude and flight path of his aircraft by visual observation of the ground, and that he may be able to avoid collision with terrain or surface obstacles. The same objective is sought by the proposed visibility minimum in control zones.

The Board also proposed to prescribe a visibility minimum for helicopter operations. However, upon evaluation of the views expressed in regard to this proposal, the excellent safety record of helicopter operations, and the unique flight characteristics of helicopters, the Board is of the opinion that safety considerations do not require the application of separate visibility minimums to helicopters at this time.

The objective of Draft Release 56-22, "Speed Control and Communication Rules for Certain High Density Airports," was to delegate to the Administrator the authority to designate a High Density Air Traffic Zone in which a speed limit and two-way radio communications would be required.

The comments made with respect to the proposed speed-limit rule indicated an almost unanimous agreement that such a rule would enhance the safety of flight operations in a high density zone.

With respect to the two-way radio communication requirement, it is found that there is agreement on the need for a rapid exchange of intelligence between the airport traffic control tower and all pilots in order to accomplish a safe and efficient movement of traffic at a high density airport; however, there is a divergence of views as to the extent of the area in which the two-way radio requirement would be applicable. It is the view of some that the communication requirements should apply to the entire zone, while others believe the rule should apply only to those aircraft taking off or landing at the high density airport. It appears unlikely that the Administrator will be able to control all the VFR traffic within such a zone or, in fact, even handle effectively the volume of communications which such requirement would create. Accordingly, it appears advisable at this time to require communication with the appropriate traffic control facility from aircraft engaged in VFR flight only when the pilot intends to take-off or land at or fly within the traffic pattern of designated airports within the high density zone.

Interested persons have been afforded an opportunity to participate in the making of these amendments (21 F. R 1748 and 21 F. R. 6302), and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 60 of the Civil Air Regulations (14 CFR Part 60 as amended) effective March 15, 1957.

1. By amending § 60.18 by adding a new paragraph (f) to read as follows:

§ 60.18 *Operation on and in the vicinity of an airport.* * * *

(f) *High density air traffic zone.* In any area not above 3,000 feet above the surface in which the Administrator finds that the volume of traffic is such as to adversely affect safety, he shall designate such airspace as a high density air traffic zone in which the following rules shall apply:

(1) *Speed.* No person shall operate an aircraft within a high density air traffic zone at a speed in excess of 180 mph or 160 knots indicated airspeed unless operational limitations for a particular aircraft require greater airspeeds, in which case the aircraft shall not be flown in excess of the minimum speed consistent with the safe operational limitations of the aircraft.

(2) *Communications requirements.* No person shall take off or land an aircraft at or enter the traffic pattern of a designated high density airport unless radio communication with the appropriate air traffic control facility has been established: *Provided,* That an aircraft not equipped with functioning two-way radio may be operated to or from an airport located within the zone if prior authorization from the appropriate airport traffic control tower has been given.

2. By amending § 60.30 (a) (1) and (2) and by adding a note thereafter to read as follows:

§ 60.30 *Ceiling and distance from clouds.* * * *

(a) *Within control zones.* (1) Unless a clearance has been obtained from air traffic control, aircraft shall not be flown beneath the ceiling when the ceiling is less than 1,000 feet; or closer than 500 feet vertically under, 1,000 feet vertically over, or 2,000 feet horizontally from any cloud formation.

(2) When operating in accordance with a clearance issued by air traffic control, aircraft shall remain clear of clouds.

NOTE: With respect to this section, an air traffic clearance obtained under these provisions does not consitute authority for the pilot to deviate from § 60.17 or any other applicable provision of the Civil Air Regulations.

3. By amending § 60.31 (a) and (b) to read as follows:

§ 60.31 *Visibility—(a) Ground visibility within control zones.* (1) Unless a clearance has been obtained from air traffic control, a pilot shall not take off or land an aircraft at an airport within a control zone or enter the traffic patter of such an airport when the ground visability is less than 3 miles.

(2) When operating in accordance with a clearance issued by air traffic control, a pilot shall not take off or land an aircraft, other than a helicopter, at an airport when the ground visibility is less than one mile: *Provided,* That where a local surface restriction to visibility exists, such as smoke, dust, or blowing snow or sand, the minimum visibility is one-half mile, if all turns after take-off and prior to landing and all flight beyond one mile from the airport boundary can be accomplished above or outside the area so restricted.

(b) *Flight visibility within control zones.* (1) Unless a clearance has been obtained from air traffic control, a pilot shall not operate an aircraft in flight within a control zone when the flight visibility is less than 3 miles.

(2) When operating in accordance with a clearance issued by air traffic control, a pilot shall not operate an aircraft, other than a helicopter, within a control zone when the flight visibility is less than one mile: *Provided,* That such aircraft may take off or land at an airport within a control zone or enter the traffic pattern of such an airport when the minimum visibility is one-half mile due to a local surface restriction such as smoke, dust, or blowing snow or sand, if all turns after takeoff and prior to landing and all flight beyond one mile from the airport boundary can be accomplished above or outside the area so restricted.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

By the Civil Aeronautics Board:

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 57-1054; Filed, Feb. 8, 1957; 8:52 a. m.]

TITLE 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T. D. 54302]

PART 6—AIR COMMERCE REGULATIONS

CHANGE IN NAME OF MILLER MUNICIPAL AIRPORT, MC ALLEN, TEX.

The official name of the Miller Municipal Airport, McAllen, Texas, which was designated as an international airport (airport of entry for civil aircraft) by Treasury Decision 54142, has been changed to "Miller International Airport."

Section 6.13, Customs Regulations, is hereby amended by substituting "Miller International Airport" for "Miller Municipal Airport" opposite "McAllen, Texas."

(R. S. 161, sec. 7, 44 Stat. 572, as amended; 5 U. S. C. 22, 49 U. S. C. 177)

[SEAL] RALPH KELLY,
Commissioner of Customs.

Approved: February 6, 1957.

David W. Kendall,
Acting Secretary of the Treasury.

[F. R. Doc. 57-1074; Filed, Feb. 8, 1957; 11:02 a. m.]

TITLE 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Housing and Home Finance Agency

Subchapter M—Military and Armed Services Housing Mortgage Insurance

PART 292a—ARMED SERVICES HOUSING INSURANCE; ELIGIBILITY REQUIREMENTS OF MORTGAGE

Section 292a.20 *Late charge provision* is hereby revoked as follows:

§ 292a.20 *Late charge provision.* [Revoked]

(Sec. 807, 69 Stat. 651; 12 U. S. C. 1748f)

Issued at Washington, D. C., February 4, 1957.

[SEAL] NORMAN P. MASON,
Federal Housing Commissioner.

[F. R. Doc. 57-1015; Filed, Feb. 8, 1957; 8:49 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

Subchapter G—Defense Contract Financing

[AR 715-6, NAVEXOS P-1006, AFR 173-133]

PART 82—DEFENSE CONTRACT FINANCING REGULATIONS

Part 82 is revised to read as follows:

AUTHORITY: §§ 82.1 to 82.74 issued under sec. 5, 40 Stat. 415, as amended, sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. 5, 2154. Interpret or apply R. S. 3648, as amended, 37 Stat. 32, sec. 201, 55 Stat. 839, as amended, sec. 5, 62 Stat. 23, sec. 301, 64 Stat. 800, as amended, secs. 2307, 7521, 70A Stat. 131, 464; 31 U. S. C. 529, 34 U. S. C. 582, 50 U. S. C. App. 611, 41 U. S. C. 154, 50 U. S. C. App. 2091, 10 U. S. C. 2307, 7521, E. O. 10210, 16 F. R. 1049, 3 CFR, 1951 Supp., E. O. 10480, 18 F. R. 4939, 3 CFR, 1953 Supp.

§ 82.1 *Scope.* This part, issued jointly by the Department of the Army, Department of the Navy, and Department of the Air Force, covers the financing of contracts and subcontracts for the national defense. It is applicable to the financing of all types of contracts, except as provided in § 82.49-2.

§ 82.2 *Application.* This part supersedes all regulations, directives, procedures, and instructions inconsistent herewith. All references to the superseded joint regulations in existing documents shall be deemed to be references to this part.

§ 82.3 *Implementation.* The content of this part shall be distributed promptly to all personnel concerned with procurement and with contract financing, including Contracting Officers, for information and compliance. Copies of all implementing regulations, directives, procedures, and instructions, as issued from time to time within the Military Departments, at all levels, shall be furnished promptly to the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management) in the Department of the Air Force, with an additional copy to be forwarded by those contract financing offices, respectively, to the Assistant Secretary of Defense (Comptroller). Changes and additions for this part will be developed within the Contract Finance Committee, in the manner contemplated by Department of Defense Directive No. 7800.1 (Appendix 1), or subsequent revisions thereof.

SUBPART A—INTRODUCTION

§ 82.4 *Scope of subpart.* This subpart describes the methods of contract financing by guaranteed loans, advance payments and progress payments, and states basic authority.

§ 82.5 *Guaranteed loans; authority.* (a) Under Section 301 (a) of the Defense Production Act of 1950, as amended, and section 301 of Executive Order No. 10480, the Department of the Army, the Department of the Navy, and the Department of the Air Force, among others, are designated as "guaranteeing agencies", and authorized by section 302 (a) of Executive Order No. 10480 "to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan * * * which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense."

(b) As defined in section 702 (d) of the Defense Production Act of 1950, as amended, "the term 'national defense' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, and directly related activity".

§ 82.6 *Guaranteed loans, description.* Guaranteed loans, usually called "V-loans," are essentially the same as other loans made by financing institutions without guarantee, except that under a standard form of guarantee agreement the guaranteeing agency is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the amount of the guaranteed percentage. Guaranteed loans afford an especially convenient medium for financing borrowers who hold subcontracts, or numerous prime contracts, or prime contracts with several contracting agencies. Funds are disbursed and collected by the lending institution, and its personnel administer the loan. Government funds are not involved except for purchases of the guaranteed portion of loans or settlement of losses.

§ 82.7 *Advance payments; authority.* Advance payments on negotiated contracts are authorized in accordance with the provisions of 10 U. S. C. 2307. Advance payments on all contracts, including those contracts awarded on competitive bids after formal advertising, are authorized pursuant to the First War Powers Act, 1941, as amended, Executive Order No. 10210, and regulations issued thereunder. Navy advance payments for salvage operations are also authorized by 10 U. S. C. 7364.

§ 82.8 *Advance payments; description.* Advance payments are advances of money, made by the Government to a contractor prior to, in anticipation of, and for the purpose of complete performance under a contract or contracts. Advance payments are made only to prime contractors. They are expected to be liquidated from payments due to the contractor incident to performance of contracts. Since they are not measured by performance, they differ from partial, progress, or other payments made because of and on the basis of performance or part performance of a contract. Advance payments may be made to prime contractors for the purpose of making sub-advances to subcontractors.

§ 82.9 *Progress payments; authority.* The authority to make progress payments is subject to the provisions of section 3648, Revised Statutes, 31 U. S. C. 529.

§ 82.10 *Progress payments; description.* The term "progress payments", as used herein, signifies payments made as work progresses under a contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion. As used in this part this term does not include payments for partial deliveries accepted by the Government under a contract, or partial payments on contract termination claims.

SUBPART B—BASIC POLICIES

§ 82.11 *Scope of subpart.* This subpart sets forth basic policies applicable to guaranteed loans, advance payments, and progress payments. Policies and procedures more particularly pertaining to the specific methods of contract financing are contained in the subparts of this part relating to each method of financing.

§ 82.12 *General.* Basic defense contract financing policy is stated in Department of Defense Directives 7800.1, 7800.4, 7800.2, 7830.1, and 7840.1, all annexed hereto and made a part hereof as Appendixes 1–5, inclusive.

§ 82.13 *Purpose of contract financing.* The providing of funds for payment of expenses of performance of contracts is an essential element of defense production. Contract financing is to be regarded as a useful working tool that may be used to the benefit of the Government, for aiding procurement by expediting performance of defense contracts and subcontracts. The contract financing system makes possible production in volume that could not be accomplished otherwise. Prudent contract financing supports procurement and production and fosters the small business policy by providing necessary funds to supplement other funds available to contractors for contract performance.

§ 82.14 *Facilities expansion.* As stated in Appendix 3, guaranteed loans will be established primarily for working capital purposes and the guarantee authority will not be used for loans for facilities expansion. Since advance payments and progress payments should be self-liquidating from contract performance, they are not used to finance fixed asset acquisitions for contractor ownership. These limitations are not intended to apply to contracts under which facilities are being acquired for Government ownership.

§ 82.15 *Financial responsibility of contractors.* Financial difficulties encountered by contractors and subcontractors may (a) disrupt production schedules, (b) cause wastage of manpower and materials, and (c) if connected with guaranteed loans, advance payments, or progress payments, result in monetary loss to the Government. Also, if financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continuance of such production, even though monetary losses may be likely under the circumstances. In order to reduce these hazards so far as possible, contracts should be entered into only with those potential contractors meeting the requirements of § 1.307 or § 2.406 of Subchapter A of this chapter, and who have the financial capacity or credit (giving due regard to the availability of progress payments, guaranteed loans, and advance payments), technical skill, management competence, and plant capacity and facilities (including subcontracting capacity) reasonably to assure their ability to perform their contracts in accordance with their terms. Care should also be taken to the extent practicable to avoid the placement of additional contracts or subcontracts with contractors in situations where additional contracts will overload the contractor's production capacity, overextend his financial resources and credit, and thus tend to interfere with timely performance of contracts on hand, and create need for additional contract financing arrangements, which may be impossible to establish on a prudent basis. In all cases, whether involving formal advertising or negotiation, it must be determined that the contractor is financially and otherwise able to perform the contract. In addition, consideration must be given to the judgment, skill, and integrity of the potential contractor, and to his reputation and experience, including prior work of a similar nature done by him, and the other factors set forth in § 1.307, § 2.406, or § 3.101 of Subchapter A of this chapter, as appropriate. Persons placing subcontracts, at all levels of subcontracting, should be encouraged to apply these standards in placing subcontracts.

§ 82.16 *Coordination before contract award.* For effective application of the principles stated in § 82.15, each purchasing office should be staffed with and use the services of persons qualified and competent to evaluate credit and financial problems, or each Contracting Officer should have available within his procuring activity, and should use the services of persons so qualified and competent to evaluate credit and financial problems. Among other things, the duties of such persons would be to arrange, prior to contract awards, and so far as practicable, prior to subcontract arrangements, that financing for performance of contemplated contracts and subcontracts is reasonably assured prior to or contemporaneously with the making of contracts. In those exceptional cases where there is substantial doubt that a prospective contractor has the financial capacity or credit resources essential to the performance of the contemplated contract, the interested procuring activity, after having determined that no satisfactory alternative sources of supply are readily available on terms equally as favorable to the Government, should, prior to placement of the contract, consult with the appropriate contract financing office of the interested Department, to determine whether financing can prudently be arranged. These contract financing offices are the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management), of the Air Force. In such consultation it should be resolved, if placement of the contract is deemed beneficial to the interests of the Government, whether and by what means financing should be provided.

§ 82.17 *Relation of loan guarantees, progress payments, or advance payments to new procurement; financing not a handicap.* In all cases, whether involving formal advertising or negotiation, the need for advance payments or for progress payments or for a guaranteed loan (with reasonable percentage of guarantee) shall not be treated as a handicap in awarding contracts to those qualified contractors who are deemed competent and capable of satisfactory performance (§ 1.307, § 2.406 of Subchapter A, and §§ 82.15 and 82.16). The ability of the contractor to perform the contract, including the availability of money or credit necessary for performance, must be reasonably assured in all cases. Within established policy, awards which are otherwise proper must not be deterred by the necessity for providing reasonable contract financing. A contractor deemed reliable, competent, capable, and otherwise responsible, must not be regarded as any less responsible by reason of the need for reasonable contract financing provided or guaranteed by a military department. In selection of an appropriate method for provision of funds, contractors will not be expected to seek or obtain loans or credit from agencies of the Government outside the Department of Defense.

§ 82.18 *Report of adverse developments.* When materially adverse developments concerning a borrower having a guaranteed loan, or concerning a contractor having advance payments or progress payments, become known to a procuring activity, pertinent facts should be reported by the procuring activity to the contract financing office of the Department principally concerned with the contract financing, so that timely appropriate protective or remedial action may be taken by coordinated action of all concerned. When there are reasons to doubt the prudence of continuing progress payments in cases involving performance difficulties or financial deterioration, decision must be made promptly and with proper regard to the harmful effects of delay on the continued operation of the contractors concerned.

§ 82.19 *Small business; general.* Immediate and continuing attention must be given at all levels to insure that constructive measures will be taken to facilitate and accelerate necessary contract financing assistance to small suppliers. Every reasonable effort must be made to assist small suppliers in the resolution of their problems relative to the financing of contract performance, as well as to assist them in understanding and complying with the requirements of per-

formance as to payment forms, inspection and cost accounting.

§ 82.20 *Timely action.* In connection with requests for provision of progress payments, advance payments, or loan guarantees, there must be timely action, no unwarranted delay, and no hesitation to make proper contract financing provisions.

§ 82.21 *Acceleration of payments.* Payments must be made promptly on all contracts when due. It is of continuing importance that there be acceleration of all proper payments earned by contractors, including progress payments.

SUBPART C—GUARANTEED LOANS

§ 82.22 *Scope of subpart.* This subpart covers the policies, organization, and procedure particularly applicable to guaranteed loans. It reflects the development of the guaranteed loan program by indicating uniform practices that are being applied pursuant to Appendixes 1, 2 and 3.

§ 82.23 *Federal Reserve Banks.* Under section 302 (b) of Executive Order No. 10480, pursuant to section 301 (b) of the Defense Production Act of 1950, as amended, each Federal Reserve Bank is designated and authorized to act, on behalf of each guaranteeing agency, as fiscal agent of the United States in the making of contracts of guarantee and in otherwise carrying out the purposes of section 301 of the Defense Production Act of 1950, as amended, in respect of private financing institutions. Pursuant to Regulation V of the Board of Governors of the Federal Reserve System, any private financing institution may submit to the Federal Reserve Bank of its district an application for guarantee of a loan or credit. This application is in substantially standard form, as approved by the Board of Governors of the Federal Reserve System, after consultation with the guaranteeing agencies. Forms of application, and information and guidance concerning applications, are available at all Federal Reserve Banks.

§ 82.24 *Board of Governors of the Federal Reserve System.* Under section 302 (c) of Executive Order No. 10480, all actions and operations of Federal Reserve Banks, as fiscal agents, are subject to the supervision of the Board of Governors of the Federal Reserve System (hereinafter referred to as "Federal Reserve Board"). The Federal Reserve Board is authorized, after consultation with the heads of the guaranteeing agencies, (a) to prescribe such regulations governing the actions and operations of fiscal agents as it may deem necessary, (b) to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and (c) to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

§ 82.25 *Procedure on application of a private financing institution.* A defense contractor or subcontractor (at any level) or supplier, who requires operating funds may apply to the private financing institution selected by him, for the necessary loan or revolving credit, and furnish necessary information to the financing institution. If the financing institution is willing to extend credit, but considers Government guarantee necessary, it may file application for guarantee with the Federal Reserve Bank of its district. The Federal Reserve Bank promptly submits copy of the application to the Federal Reserve Board listing defense contracts, for transmittal to the interested guaranteeing agency, so that determination may be made as to eligibility of the prospective borrower. For the purpose of expediting, the Federal Reserve Bank may also, pursuant to general instructions of the guaranteeing agencies, submit schedules of defense contracts to the interested Contracting Officers, who are expected at once to take appropriate steps for determination of eligibility, and to submit their findings and report, including Certificate of Eligibility where appropriate, to the designated central procurement office, or contract financing office as the case may be, within the guaranteeing agency. Concurrently with the process for determination of eligibility, the Federal Reserve Bank makes any necessary credit investigation, to the extent and in the manner that it considers investigation or verification appropriate to supplement information furnished by the applicant financing institution, all with a view to expediting necessary defense financing in such a way as to afford the best reasonable protection against monetary loss. The report and recommendation of the Federal Reserve Bank are sent to the Federal Reserve Board, which transmits them to the interested guaranteeing agency, in Washington. If the application is approved, on such terms and conditions as may be deemed appropriate by the responsible officer or official within the guaranteeing agency, the guaranteeing agency then authorizes the Federal Reserve Bank, by standard form of authorization transmitted through the Federal Reserve Board, to execute and deliver to the financing institution a standard form of guarantee agreement (of which sample copy is attached hereto, as Appendix 6[1]), with the terms and conditions approved for the particular case. The Federal Reserve Bank, as fiscal agent for the guaranteeing agency, then issues the guarantee to the financing institution, which makes the loan. Substantially the same procedure may be followed on application for guarantee of loans to be made to a potential defense contractor who is actively negotiating or bidding for defense business, except that the guarantee is not authorized until the prospective defense contract has been executed.

§ 82.26 *Loan guarantees to Federal Reserve Banks.* The Defense Production Act of 1950, as amended, and Executive Order No. 10480 also authorize guarantees for loans made or participated in by Federal Reserve Banks. The procedure outlined in § 82.25 applies also to loan guarantees where a Federal Reserve Bank is making or participating in the loan, except that in such cases the interested Federal Reserve Bank, as a financing institution, does not act as fiscal agent, and when approved, the guarantee agreement is executed by an official of the guaranteeing agency.

§ 82.26–1 *Other Government agencies.* Loan guarantees are not issued to other departments or agencies of the Government.

§ 82.27 *Loan guarantees for terminated contracts.* (a) Guaranteed loans ordinarily provide for financing based on the borrower's recoverable investment in defense production contracts, including those contracts which have been terminated for the convenience of the Government. Guaranteed loans may also be established after total or partial termination of contracts for the convenience of the Government, or before such termination when it is known that termination of particular contracts for the convenience of the Government is about to occur. Such guaranteed loans are expected to provide necessary financing pending termination settlements and payments, and also to provide any funds necessary for continuing performance of defense production contracts that are eligible for financing under the guaranteed loan.

(b) The procedure on applications for such guarantees will be substantially the same as that outlined in § 82.25, except that Certificates of Eligibility (§§ 82.36 and 82.37) will not be required for contracts which have been wholly terminated, nor for the terminated portion of contracts which have been partially terminated. It is of course expected that necessary precautions, appropriate to the circumstances of individual cases, will be taken, as in other cases, to avoid losses and to cause such loans to be self-liquidating from the proceeds of defense production contracts. This type of loan guarantee, intended primarily for contract termination financing, is not provided before the imminence of particular contract terminations, for the reasons outlined in § 82.35 (c). Further reasons include the difficulty of determining whether contract terminations will occur in the future and will require guaranteed loan financing, and the expense and administrative burden that would be involved in establishing commitments which may in fact never be used.

§ 82.28 *Guaranteeing agency.* The guaranteeing agencies which have been designated under Section 301 of the Defense Production Act of 1950, as amended, are the Departments of the Army, Navy, Air Force, Agriculture, Commerce and Interior, General Services Administration, and Atomic Energy Commission. All of the guaranteeing agencies have concurred in the following policy:

Where a prospective borrower under a V-loan has defense contracts or subcontracts

[1] Filed as part of the original document.

in which more than one of the guaranteeing agencies are interested, the guaranteeing agency in such case will in general be that agency which, as of the time of the application for the guarantee, has the preponderance of interest in such contracts and subcontracts on the basis of the dollar amount of the prospective borrower's unfilled and unpaid balances of such contracts and subcontracts and estimated claims under terminated contracts (exclusive of contracts with advance payments, if such advance payments are not to be liquidated by the proposed guaranteed loan). If the application is approved and a guarantee agreement is executed on behalf of such agency having the preponderance of interest, that agency will bear all losses and expenses and receive all revenues under such guarantee without allocation to other agencies of the Government.

In this connection, among the Military Departments, single service procurement contracts are deemed those of the purchasing department.

§ 82.28–1 *Effect on preponderance, of progress payments or denial of Certificate of Eligibility.* Among the Military Departments, the determination of preponderance of interest, under § 82.28, is made without regard to the existence of progress payments on particular contracts, and without regard to the issuance or nonissuance of Certificates of Eligibility on particular contracts.

§ 82.28–2 *Shifting of preponderance.* During the course of a guaranteed loan, preponderance of interest in the borrower's defense production contracts may shift from one of the Military Departments, as guaranteeing agency, to another Military Department. When such preponderance has shifted materially so that substantial preponderance is in one of the Military Departments other than the guaranteeing agency, action on requests for increases in the amount of guaranteed loans, and on requests for extensions of maturity for a period of more than six months, will ordinarily be taken by the Military Department then having such preponderance of interest. However, in the above situation, action will be taken by the Military Department which has guaranteed the loan, if the loan is in distress, with fairly foreseeable losses, and the requested extension or increase is for the purpose of orderly liquidation of the loan in a manner designed to reduce the amount of the loss. If such a loan is not in distress, and losses are not fairly foreseeable, and the greater part of the borrower's defense production contracts are determined to be eligible for a continuing guaranteed loan, and the circumstances of the case are such that favorable action would have been taken by the then guaranteeing agency if it had remained preponderantly interested in the borrower's defense production contracts, similar favorable action will be taken by the Military Department then having such preponderance of interest. In these cases, while new application for guarantee is required, the file of the contract financing office which has authorized the existing guarantee will be transferred to the contract financing office of the Military Department then having preponderant interest in the case, and the information to be submitted with the application need only be current financial information, data concerning the borrower's defense production contracts, and other pertinent facts concerning the borrower and its operations, to the extent necessary to supplement and bring up to date the information previously furnished to the guarantor. In order not to disturb or impair any security for the existing loan, and for the convenience of all concerned, it is preferable that the new guarantee merely replace the former guarantee, with appropriate recitals as to cancellation of the former guarantee, and with appropriate revision of the existing loan agreement and of such collateral security instruments as may require revision.

§ 82.29 *100 percent guarantees.* It is the policy of the guaranteeing agencies that 100 percent guarantees shall be limited to the greatest extent compatible with the requirements of the national defense. Applications for 100 percent guarantees will be approved only in cases in which the guaranteeing agency determines that the circumstances are exceptional, that the operations of the borrower are vital to the national defense, and that no other suitable means of financing are available.

§ 82.30 *Asset formula.* It is the policy of the guaranteeing agencies that borrowings under guaranteed loans made primarily for working capital purposes should be limited, in accordance with an asset formula, to amounts which do not exceed specified percentages (90 percent or less) of the borrower's investment in defense production contracts. The formula may include all items for which the borrower would be entitled to payment on performance or termination of defense contracts, but would not include any amounts (for which no work has been done nor expenditures made by the borrower) to become due as the result of later performance under the borrower's contracts. However, any such asset formula would be subject to relaxation in appropriate cases to the extent and for the time actually necessary for contract performance where the contractor's working capital and credit are inadequate. This "asset formula" does not include "cash collateral" or bank deposit balances.

§ 82.31 *Amount and maturity of guaranteed loans.* (a) Subject to the limitations of the asset formula (§ 82.30), the maximum amount of guaranteed credit in individual cases, and the maturity date of guaranteed loans or credits, are fixed to conform reasonably to the borrower's financing requirements for defense production contracts on hand at the time of application for guarantee. If additional defense production contracts are entered into after the application and before authorization of a guarantee, to such extent as to require increase in the maximum amount, or longer maturity for the requested guaranteed loan, adjustments may be made to provide for the borrower's additional financing requirements. Also, guarantee agreements for existing guaranteed loans may be amended, on submission of pertinent information and Federal Reserve Bank report to the guaranteeing agency concerned, to provide financing for defense production contracts entered into by the borrower during the term of the guaranteed loan.

(b) Also, within the limits of the applicable loan formula and ceiling amount, there is generally no objection to inclusion in the borrowing base, of assets under defense production contracts entered into after the date of the guarantee agreement. However, in exceptionally weak cases, and in the cases of guaranteed loans established for financing only one or a small number of contracts, it is the practice to require that financing of relatively substantial additional defense contracts under existing guaranteed loans be done only with the consent of the guarantor.

§ 82.32 *Assignments of claims under contracts.* (a) Assignments of claims under the borrower's defense production contracts are generally required, including assignment of proceeds of such contracts entered into after issuance of the guarantee if after acquired contracts are eligible for financing under the guaranteed loan in a given case. However, assignments need not be required in particular cases, (1) where the borrower's financial condition is so strong as to cause assignments of any contracts to be considered not necessary for the protection of the loan, or, (2) where incident to assignment of major contracts it is considered not necessary for the protection of the loan to require initial assignment of relatively small contracts, or, (3) where the large number of contracts of the borrower for small dollar amounts, would cause the making and administration of contract assignments to be unduly burdensome and inconvenient so long as not deemed essential for the protection of the loan.

(b) It is required, as standard practice, that defense production contracts, not theretofore assigned, will be assigned whenever requested by the guarantor or the financing institution.

(c) Subcontracts and purchase orders issued to subcontractors are not considered acceptable for financing under guaranteed loans if and so long as the issuer of the subcontracts or purchase orders (1) reserves the privilege of making payments directly to the assignor or to the assignor and assignee jointly after notice of the assignment, or (2) reserves the right to reduce or set off assigned proceeds under defense production contracts by reason of claims against the borrower arising after notice of assignment and independently of defense production contracts under which the borrower is the seller.

§ 82.33 *Other collateral security.* Ordinarily, mortgages on fixed assets are not required, but they are required where considered essential to protect the Government. Liens or other security arrangements pertaining to inventories are also seldom required, except when desired by financing institutions or in exceptional circumstances when deemed necessary to protect the Government. Depending upon the circumstances of individual cases, endorsements, guarantees, subordinations, and stand-bys of

other indebtedness, and other special security devices are required when deemed necessary for the protection of the Government.

§ 82.34 *Contract surety bonds in relation to loan guarantees.* (a) In most jurisdictions, upon default by a contractor and performance of the surety's obligations, the surety's right of subrogation gives to the surety, ahead of a financing institution which had made a loan for contract performance, prior claim to payments made on the bonded contract after default, and in performance of its obligations the surety also has the benefit of materials on hand that have been paid for by the contractor, even though progress on the contract before default has been financed by loans from the financing institution.

(b) Because of the foregoing, on loan guarantees in connection with prime contracts, the guarantor's loss on the loan, payable to the financing institution, may serve to take away from the Government the benefit of performance of the surety's obligations on its bond; and in subcontract cases the loan may serve to benefit the surety at the expense of the financing institution and guarantor.

(c) Except to the extent that surety bonds are required by law, bonds are generally not required. Yet it may sometimes be necessary to rely upon a contractor whose capacity to perform is so doubtful that a bond is required for the protection of the Government. The guarantee of a loan to a contractor of such doubtful capacity to perform necessarily involves unusual risks of monetary loss. Contract surety bonds, and guaranteed loans for financing bonded contracts are regarded as fundamentally incompatible unless the interests of the surety are subordinated in favor of the guaranteed loan.

(d) In order to maintain the advantages of performance bonds existing in favor of the Government on prime contracts, in cases where the Government contract or contracts covered by surety bonds are substantial in relation to the contractor's total backlog of defense production contracts or where the amount of the bond is substantial in relation to the contractor's net worth, applications for loan guarantees are approved only if the surety or sureties on the bonds involved will subordinate their rights and claims in favor of the guaranteed loan.

(e) In cases involving relatively substantial subcontracts covered by surety bonds, approval of an application for loan guarantee will also be contingent upon the establishment of a reasonable allocation agreement between the surety or sureties and the financing institution, which would have the effect of giving the financing institution the benefit, with regard to payments to be made on the contract, of that portion of its loans fairly attributable to expenditures made under the bonded subcontracts prior to notice of default.

§ 82.35 *Other borrowings.* (a) Since V-loans are generally measured, and limited by, stated percentages of the borrower's investment in defense production operations and terminated defense contracts, it is evident that borrowings outside the guarantee may be necessary in some cases to support the borrower's nondefense activities. It has been recognized in practice, that while prohibition of borrowings outside the guaranteed loan is preferable where practicable in a given V-loan case, such other borrowings should be permitted when necessary.

(b) However, in cases where borrowings outside the V-loan are not prohibited, some restrictions on unguaranteed borrowings appear necessary for protection of the Government interest. These include reasonable limitations on the amount of, and collateral security for, such unguaranteed borrowings, and usually a provision that collateral security, if any, for such unguaranteed loans made by the same financing institutions should also be secondary collateral for the V-loan.

(c) If a credit is to be guaranteed under section 301 of the Defense Production Act, in circumstances where there may be borrowings either under or outside the guarantee, the guaranteed credit, having been established, and being susceptible to use at any time, should be utilized first and fully, and not reserved as free insurance pending such time and circumstances as may make its use convenient to the financing institution. It has therefore been determined, in line with the practice developed toward the end of the past war, that for those cases in which borrowings outside the V-loan are not prohibited, it should be required uniformly that other borrowings outside the V-loan may be incurred and remain outstanding without the consent of the financing institution and the guarantor only when the V-loan is being used to the full extent permitted by the V-loan agreement. Appropriate certificates of the borrower, in the same form as those used to measure the amount that may be outstanding under the V-loan, but submitted at intervals not longer than 30 days, could be used to determine when there may be borrowings outstanding outside the V-loan.

(d) It is of course recognized that appropriate exceptions will have to be made in individual cases to permit the continuation of outstanding term loans, to permit future unguaranteed term loans for expansion of facilities, and to permit continuance of such financing as may be necessary to supplement a V-loan.

§ 82.36 *Certificate of Eligibility.* (a) The Certificates of Eligibility, and supporting data, furnished by principally interested procuring activities, are the basis for the ultimate findings, incident to authorization or approval of loan guarantees, that the case meets the requirements of section 301 of the Defense Production Act of 1950, as amended, and of section 302 of Executive Order No. 10480.

(b) In its present form this certificate includes findings that the materials or services involved are deemed essential to the national defense, that (except for small-business concerns) these cannot be procured readily from an alternative source without prejudice to the national defense, and that the contractor has the technical ability and the required facilities to perform. It is required that supporting data be contained in or accompany the certificate. It has been provided on the approved form of certificate, as the standard for guidance in considering issuance of Certificates of Eligibility, that—

> This is not intended as a statement that there is absolutely no alternative source other than this contractor. The certification is founded on practical considerations. These considerations include the urgency of supply schedules, technical and plant capacity and unwillingness of other suppliers, time and expense involved in reletting all or parts of contracts (including expense of terminations for convenience, and delays incident to future determinations of default), comparative prices, effect of interruptions of established subcontracting arrangements, and other pertinent practical factors.

§ 82.37 *Procedure for Certificate of Eligibility.* (a) It is important that the processing of Certificates of Eligibility be accomplished expeditiously. It is necessary that there be application of uniform and consistent standards in determining eligibility.

(b) As indicated in § 82.36 (b), the determination in the Certificate of Eligibility is based upon giving full weight to practical considerations. It is also intended that in determining whether the materials or services can be procured readily from an alternative source without prejudice to the national defense, due consideration will be given to the effect of the use of alternative sources on the established major policies affecting procurement, such as those relating to the mobilization base, and industrial dispersal. If the reletting of contracts with other sources would involve conflict with any of such policies, such reletting in conflict with any such policy should be deemed prejudicial to the national defense. Also, in considering the practicability of alternative sources, in addition to the considerations outlined above, regard should be given to the question whether such potential alternate sources would require Government financing by progress payments, or advance payments, or Government supported financing by means of a guaranteed loan. If such financing would be required for alternative sources, such alternate sources may be fairly considered not "readily available" within the meaning of the Certificate of Eligibility.

(c) Ordinarily, if Certificate of Eligibility is not issued by the interested procuring activity, it does not follow that the contract involved will be terminated unless the contractor is in default to the extent that termination for default is considered desirable, or unless it has been determined that the contractor will be unable to perform his contract. Thus, in determining whether alternate sources are readily available without prejudice to the national defense, consideration should be given to the effect on supply schedules, and costs to the Government, if the contractor should default at a later date and be unable to perform by reason of inadequate financing.

(d) In determining eligibility of small-business concerns, the factor of

ready availability of alternative sources will not be considered, and the paragraph of the form of Certificate of Eligibility pertaining to alternative sources will be deleted in cases of small-business concerns. In such cases the fact that the particular items or services involved are being procured under or pursuant to a contract of a Military Department is considered adequate to support and require the finding that the materials or services involved are deemed essential to the national defense. However, this does not mean that the Certificate of Eligibility should be provided automatically for small-business concerns, or that any less care and diligence should be exercised for determining eligibility for small-business cases than for other cases. See paragraph (e) of this section.

(e) It is necessary in all cases, whether or not involving a small-business concern, that, in considering issuance of a Certificate of Eligibility, emphasis be placed on the factors of the contractor's technical ability, management competence and reliability, plant capacity and facilities, and generally on his ability to perform satisfactorily if adequate financing is provided. If these factors are not favorable, Certificate of Eligibility should not be issued. See Appendix 2.

(f) With regard to contracts existing at the time of request for Certificate of Eligibility, the percentage of guarantee requested by a financing institution is not a factor to be considered in connection with issuance of the Certificate.

(g) In all cases, the supporting data furnished to the contract financing office should be sufficient to support the findings made in the Certificate of Eligibility. This data should contain available information pertinent to the matter of ability to perform satisfactorily, including known information as to past performance, and available information on the relation of the contractor's operations to supply schedules, and available pertinent information on other practical factors such as comparative prices and the time and expense that would be involved if reletting the contracts should become necessary. All of this information, including particularly an indication as to whether or not the contractor is considered an important source for materials or services, is necessary and important for consideration by the contract financing offices in determining the ultimate question whether, on their evaluation of all the circumstances of particular cases (including the contractor's financial condition and financial record), the authorization of a guarantee would be prudent and in the best interests of the Government. When Certificate of Eligibility is not furnished, the facts and reasons leading to declination of the certificate should be furnished.

(h) In those cases of subcontracts, where the prospective borrower is financially weak in relation to the financial condition of his defense contract customer, and the interests of the Government would be fostered by the making of progress payments to the subcontractor by his customer, it is appropriate that steps be taken, by coordinated effort of the procuring activity and the contract financing office, to arrange to the extent practicable for such progress payments to the subcontractor by his customer. By such means, in appropriate cases, the guaranteed loan may become unnecessary, or necessary in lesser amount, and the risks of loss are borne wholly or partly by the prime contractor or subcontractor responsible for selection of the prospective borrower as his subcontractor.

(i) If materially adverse information of any character concerning the prospective borrower is known to a procuring activity, such materially adverse information should be fully reported to the interested contract financing office. However, procuring activities are not expected to make any special investigation of the prospective borrower's financial condition in connection with applications for loan guarantees, as reports concerning financial condition of prospective borrowers are made by the Federal Reserve Banks.

(j) When Certificates of Eligibility are requested within a Department, or by one Department from another Department, reply will be made as promptly as possible, on a priority basis, as delays in financing may retard contract performance. Ordinarily, requests for Certificates of Eligibility, and pertinent data, will be made only with respect to those contracts deemed of material consequence under the circumstances of particular cases.

(k) In cases involving several contracts or subcontracts, including contracts or subcontracts relatively minor in relation to dollar amounts of other contracts involved, the processing of Certificates of Eligibility should not be delayed pending determinations concerning the relatively minor contracts. When any office within a procuring activity has on hand information concerning the substantial preponderance of amount of contracts with which it is concerned, its action concerning the Certificate of Eligibility should be completed without awaiting information on which to make determinations or recommendations concerning minor contracts. Basically, in situations involving numerous contracts, the determination as to eligibility should be founded upon the need of the prospective borrower's operation in the defense production program, and if his operation is considered necessary for performance of a substantial preponderance of his contracts, it should usually be unnecessary to make determinations concerning the eligibility of any particular minor contracts.

(l) When a Contracting Officer or other person within a procuring activity responsible for processing requests for Certificates of Eligibility has reason to believe that an application for loan guarantee has been filed or is about to be filed, relating to a contract or subcontract within his cognizance, he should, without awaiting request for Certificate of Elibility or request for information bearing on issuance of a Certificate of Eligibility, initiate the completion and transmittal of such information and certificate to the appropriate office within his Department, for forwarding to the contract financing office within the Department.

SUBPART D—ADVANCE PAYMENTS

§ 82.38 *Scope of subpart.* This subpart covers policy and procedure for advance payments under prime contracts. It is to be applied in conformity to the basic policies stated in Appendixes 1–4 inclusive, annexed to this part. In addition to this subpart, other portions of this part are applicable to advance payments, specifically, §§ 82.1, 82.2, 82.3, 82.4, 82.7, 82.8, and all of Subpart B of this part.

§ 82.39 *Negotiated contracts.* Pursuant to the authority of Title 10, U. S. Code, section 2307, advance payments under negotiated contracts may be made, with the approval of the Under Secretary or the Assistant Secretary concerned, in any amount not exceeding the contract price and upon such terms as the parties shall agree, provided—

(a) The contractor gives adequate security;

(b) Provision for advance payments is in the public interest or in the interest of the national defense, as determined by the Under Secretary or Assistant Secretary concerned; and

(c) Provision for advance payments is necessary for the procurement of the property or services under the contract, as determined by the Under Secretary or the Assistant Secretary concerned.

§ 82.39–1 *Formally advertised contracts.* Advance payments are made on formally advertised contracts pursuant to the First War Powers Act, 1941, as amended, and Executive Order No. 10210. See Appendixes 2 and 4.

§ 82.40 *Security provisions.* The advance payment agreement under 10 U. S. C. 2307 (as well as under the First War Powers Act, 1941, as amended, as provided in Appendix 4) should provide for deposit of all payments into special bank accounts and should include suitable covenants to protect the Government's interest. Advance payments under such authorizations should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon such of the material and other property acquired for performance of the contract, as the parties shall agree.

§ 82.41 *General limitation on authority.* In all cases advance payments shall not be authorized unless no other contractor is readily available without prejudice to the national defense to furnish the desired supplies or services, upon terms satisfactory to the Department, without provision for advance

payments. For guidance, see §§ 82.36 (b), 82.37 (b) and (c), 82.42, and Appendix 2.

§ 82.42 *Uses of advance payments.* Advance payments are last in the general order of preferences stated in Appendix 1. However, as provided in Appendix 4, it is not necessary to give consideration to availability of other means of financing, or to use of the contractor's own working capital to the extent possible, in connection with (a) nonprofit contracts with nonprofit educational or research institutions for experimental, research, and development work, or (b) contracts solely for the management and operation of Government-owned plants. Subject to the provisions of this part, advance payments are considered useful and appropriate for, (1), contracts for acquisition of facilities at cost, for Government ownership, (2), contracts involving operations so remote from a financing institution that the financing institution could not be expected to provide suitable administration of a guaranteed loan, (3), contracts of such highly classified nature that the Department considers it undesirable for national security to permit assignment of claims under the contract, (4), rare but essential contracts of those contractors, unusually weak or overextended financially, in those cases in which performance may be better fostered and risks of financial loss most effectively minimized by very close control of funds and supervision of performance by personnel of the Department concerned, (5), contracts for the financing of which a financing institution will not assume a reasonable portion of the risks under a guaranteed loan, and (6), exceptional cases in which the utilization of advance payments will be more beneficial to the interests of the Government than any other available method of financing. Circumstances will occur, especially on contracts with small-business concerns, in which advance payments will be more beneficial to the interests of the Government and more suitable to the situation of the contractor than other methods of contract financing. If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hestitation in recommending to higher authority that advance payments be established.

§ 82.43 *Types of contracts that may have advance payments.* Advance payments may be made on any approved type of contract, as defined in § 1.201–6 of Subchapter A of this chapter.

§ 82.44 *Application for advance payment.* The contractor's application for advance payment, whether incident to the making of a contract or by way of amendment or supplemental agreement for advance payments under an existing contract, may be in the form of a letter request or other writing. The application should refer to the contract under which advance payments are requested, and should include or be accompanied by, such of the following as may be appropriate under the circumstances of the case for full understanding of the propriety and reasonable necessity of advance payments, for evaluation of the contractor's ability to perform its contracts and to repay the contemplated advances, and for informed judgment with regard to the terms, conditions and protective provisions that will be appropriate and prudent for the protection of the Government.

(a) Balance sheet and profit and loss statement for the most recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; also latest available interim balance sheet and profit and loss statement of the current fiscal year. If audit reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; also, if a proprietorship or partnership, personal financial statement of proprietor or partners;

(b) Appropriate explanation and schedules to indicate (1), aging and collectibility of accounts and notes receivable, (2), obsolescence of inventory and method of valuing inventory, (3), adequacy of reserves for depreciation, (4), aging of accounts and notes payable, including schedule of major creditors and interest rates and other charges, if any, (5), mortgages, liens, pledges, assignments, conditional sales, hypothecations and other encumbrances or security arrangements, if any, (6), analysis of surplus, (7), contingent liabilities (and liabilities not shown in the financial statements), if any, including those on endorsements, guarantees, warranties, surety bonds, tax assessments or deficiences, renegotiation, and material litigation pending or threatened, (8), existing credit or financing arrangements, and (9), such other facts as may be appropriate for adequate disclosure and understanding of the contractor's financial condition;

(c) Schedule of insurance maintained and to be maintained, especially as to inventories;

(d) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and also indicating bids outstanding and contemplated, and explanation concerning contracts under negotiation, in addition to the contract under which advance payments are requested;

(e) Cash forecast, showing estimated disbursements and receipts for the period in which the requested advance payment is expected to be outstanding;

(f) Schedule of leases, deferred purchase arrangements, and patent or royalty arrangements, outlining terms, and indicating relationship, if any, of lessors or vendors to the applicant;

(g) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past two years;

(h) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors, and major stockholders or owners, and disclosing character and amount of business transactions with affiliates; also, if a corporation, list of major stockholders, and shares held;

(i) Summary history of contractor and its principal management personnel, indicating particularly any past insolvencies of the applicant or a predecessor or of the officers, partners, or proprietors;

(j) Proposed amount of advance payments, and maximum percentage of contract price to be advanced;

(k) Name and address of bank suggested as depository for the advance payment special account; and

(l) Except for contracts mentioned in § 82.42 (a) and (b), of description of efforts made to obtain private financing, including guaranteed loan.

§ 82.45 *Action by contracting officer.* After such investigation as may be appropriate, and analysis of the request and information submitted by the contractor, the Contracting Officer should transmit to the appropriate office within his Department, in original and such number of copies as may be required within the Department—

(a) The request and information furnished by the contractor;

(b) Report of investigation, including past dealings with the contractor, and comment on the character and responsibility of the contractor, technical ability, and plant capacity;

(c) Date and identifying symbol of the approval of the award, citation of the appropriation available, type of contract, dollar amount of contract, the items to be supplied, and schedule of deliveries or performance, status of performance and deliveries if any, contemplated profit or fee, and copy of contract, if available;

(d) Proposed advance payment contract provisions or supplemental agreement, including proposed security provisions, unless those are to be provided by the contract financing office;

(e) Certificate that (1), the required materials or services are essential to the national defense, and (2), cannot be procured readily from an alternative source without prejudice to the national defense, upon terms satisfactory to the Department, without provision for advance payments;

(f) The determination and findings mentioned in paragraphs §§ 82.39 (b) and (c), unless those are to be provided by the contract financing office;

(g) Recommendation that the advance payment be approved;

(h) Justification of proposal, if any, for waiver of interest charge (see Appendix 4); and

(i) If the Contracting Officer determines that the requested advance payment should be disapproved, the contractor's request, information submitted, report of investigation (if any), and statement of reasons for adverse determination should be sent forward to the Army Comptroller, in the Department of the Army, to the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and to

the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force. This information may be useful in connection with existing or prospective arrangements for other financing.

§ 82.46 *Security and covenants.* Because of the variations in circumstances of individual cases, no fixed rule can be prescribed for determining adequacy of security in a particular case. The minimum security will be that required by the provisions of approved contract forms, supplemented by such further provisions and arrangements, if any, as may be considered appropriate for the protection of the Government under the circumstances of each case. Advance payment bonds usually will not be required. When and to the extent deemed necessary and appropriate, special security provisions will be required, such as, for example, personal or corporate endorsements or guarantees, pledges of collateral, subordination or stand-by of other indebtedness, and controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, debt retirement or stock retirement, and creation of additional obligations.

§ 82.47 *Advance payments in addition to progress payments.* Where necessary and in accordance with this part, advance payments may be authorized in addition to progress payments on the same contract.

§ 82.48 *Forms of contract provisions and supplemental agreements.* The approved forms for agreement covering advance payment special bank accounts, and approved forms of advance payment contract provisions and supplemental agreements for use in connection with the several types of approved contracts are set out below. Variations from the approved forms of contract provisions for advance payments should be made only when necessary in exceptional circumstances, with the approval of the person having authority to approve the particular advance payment contract involved.

§ 82.48–1 *Forms of agreement for special bank account.* For all advance payments substantially the following form of agreement will be used for the special bank account or accounts:

AGREEMENT FOR SPECIAL BANK ACCOUNT

Agreement entered into this _____ day of _____, 195__, between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, _____, a corporation under the laws of the State of _____, hereinafter called the Contractor, and _____, a banking corporation under the laws of _____, located at _____, hereinafter called the Bank.

RECITALS

(a) Under date of _____, 195__, the Government and the Contractor entered into Contract(s) No. _____, or a Supplemental Agreement thereto, providing for the making of advance payments to the Contractor. Copy of such advance payment provisions has been furnished to the Bank.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act, creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U. S. C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated

"_____,
(Name of contractor)
_____ Special Bank Account."
(Department)

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(1) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the Bank with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the Administering Office designated in the advance payment contract mentioned above, or from the duly authorized representative of the Contracting Officer or the Administering Office, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank through the Contracting Officer upon Department of the _____ stationery and purporting to be signed by, or by the direction of _____ or his duly authorized representative, shall, in so far as the rights, duties and liabilities of the Bank are concerned, be conclusively deemed to have been properly issued and filed with the Bank by the Department of the _____.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of this Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify _____
_____
(Administering office)

In witness whereof the parties hereto have caused this Agreement to be executed as of the day and year first above written.

_____
(Signatures and official titles)

§ 82.48–2 *Advance payment provisions.* Approved contract provisions for advance payments, with directions for use where appropriate, follow:

(1) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering the advance payments (hereinafter called the "Administering Office" and designated in paragraph (14) (d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (14) (a) below; (iii) without a properly certified invoice or invoices.

(2) *Special Bank Account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14) (b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer, or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent").

[*When considered not reasonably necessary for the protection of the Government, the countersignature requirement may be waived for contractors who are financially strong, with good performance records and good past experience with regard to contract cost disallowances. In such cases, the following sentence may be added to paragraph (2)*]:

Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(3) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Subchapter A, Part 15 Section XV of the Armed Services Procurement Regulation), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[*In the case of a cost reimbursement contract, insert the following paragraph instead of paragraph (3:*]

(3) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost as defined in Article____of this contract, or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(4) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advances previously made and

liquidated) in excess of the amount, percentage of the contract price or estimated cost as the case may be, specified in paragraph 14 (a). In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to (____ percent) of the stated contract price of $_____, or such lesser amount to which the contract price may have been reduced, plus (i) increases, if any (not resulting from any provisions for price redetermination or escalation), in the above stated contract price not exceeding, in the aggregate $_____ (*Insert here not more than 10 percent of stated contract price above*) and (ii) all increases in contract price resulting from any provision for price redetermination or escalation, the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[*The percentage stated above should not be more than 95 percent. In appropriate cases, where more rapid liquidation is desirable, the following sentence may be inserted at the beginning of paragraph (5), with the same percentage specified as that stated in paragraph 14 (a)*]:

To liquidate the principal amount of any advance payment made to the Contractor hereunder, there shall be deductions of ____ percent from any and all payments made by the Government under the contracts involved.

[*In case of a cost reimbursement contract, insert the following paragraph*]:

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to the total estimated cost of $_____ for the work under this contract (not including fixed fee, if any), or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, $_____, (*Insert not more than 10 percent of estimated costs stated above*) (including without limitation, reimbursable costs incident to termination for the convenience of the Government as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges, until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(6) *Interest Charge.* If required in paragraph (14) (c) below and at the rate therein specified, the Contractor shall pay interest to the Government upon the daily unliquidated balance of advance payments made under this contract. If the full amount of such interest is not paid by deduction or otherwise upon the completion or termination of this contract, the deficiency shall be paid by the Contractor to the Government upon demand. Interest at the rate specified in paragraph (14) (c) shall be computed at the end of each calendar month on the average daily balance of the principal of the advance payments outstanding. In determining such balance, (1) charges on account of the advance payments to the Contractor shall be made as of the date of the checks therefor, and (2), credits arising from deductions from payments to the Contractor shall be made as of the date of issue of the checks for such payments. [*For cost reimbursement contracts, use, instead of (2) above: (2) credits resulting from deductions from cost reimbursements shall be made upon the approval of the vouchers by the Disbursing Officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher, which data shall as to each such voucher be certified by the Contracting Officer or his duly authorized representative.*] Also, in determining such balance, credits arising from cash repayments to the Government by the Contractor shall be made as of the date the checks therefor are received by the Disbursing Officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments otherwise due to the Contractor under the contracts on which advance payments have been made. [*For cost-plus-fixed-fee contracts, use the following, instead of the next preceding sentence: As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under this Contract.*] In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the contract price or fixed fee as the case may be. The interest shall not be compounded, and shall, subject to the provisions of paragraph (11) hereof, cease to acrue with respect to each contract upon which advance payments are outstanding hereunder, upon termination of such contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

(7) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U. S. C. 264).

(8) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder together with interest charges thereon.

(9) *Lien on Property Under Contract.* Any and all advance payments made under this contract, together with interest charges thereon, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(10) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (i) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder had been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, sub-assemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(11) *Default Provisions.* Upon the happening of any of the following events of default, (i) termination of this contract by reason of fault of the Contractor (ii) a finding by the Administering Office that the Contractor (a) has failed to observe any of

the covenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or (b) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (c) has allocated inventory to this contract substantially exceeding reasonable requirements, or (d) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (iv) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or (v) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances; (a) withdraw all or any part of the balance in the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and apply such amounts in reduction of advance payments then outstanding hereunder and in reduction of any other claims of the Government against the Contractor; (b) charge interest on advance payments outstanding during the period of any such event of default at the rate of six percent (6%) per annum; (c) demand immediate repayment of the unliquidated balance of advance payments hereunder; or (d) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(12) *Prohibition Against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company or other financing institution.

(13) *Information—Access to Records.* The Contractor shall furnish to the Administering Office signed or certified balance sheets and profit and loss statements monthly, or at such other intervals as may be required, together with a monthly report on the operation of the Special Bank Account in prescribed form, and such other information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection and audit of the Contractor's books, records and accounts.

(14) *Designations and Determinations.*

(a) Amount. The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts repaid or withdrawn pursuant to paragraph (4)) shall not exceed $_____, or ____ percent of the contract price (which is now $_____), as it may be amended, whichever shall be the smaller. [*For cost reimbursement contracts, insert the following:*] (a) Amount. The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts repaid or withdrawn pursuant to paragraph (4)) shall not exceed $_____, or ____ percent of the estimated cost of this contract (exclusive of the Contractor's fixed fee) as such cost may be amended from time to time, whichever shall be the smaller.

(b) Depository. The bank designated for the deposit of payments made hereunder shall be _____.

(c) Interest Charge. Interest shall be charged in the manner provided herein at the rate of five percent per annum. (*In the case of advance payments made without interest, insert the following:*)

No interest shall be charged for advance payments made hereunder, except as provided for in paragraph (11) (b). The Contractor shall charge interest at the rate of five percent per annum on sub-advances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on sub-advances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(d) Administering Office. The office administering advance payments is designated as _____.

(15) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Administering Office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Administering Office, to the extent that such additional security is available.

(16) *Representations and Warranties.* To induce the making of the advance payments, the Contractor represents and warrants that:

(a) The balance sheet, the profit and loss statement and any other supporting financial statements, heretofore furnished to the Administering Office, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor.

(b) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(c) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Administering Office.

(d) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(e) The Contractor has the power to enter into this contract and accept advance payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(f) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Administering Office. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(g) All information furnished by the Contractor to the Administering Office in connection with each request for advance payments is true and correct.

(h) These representations and warranties shall be continuing, and shall be deemed to have been repeated by the submission of each invoice for advance payments.

(17) *Sub-advances.* Substantially the following provision should be included in the contract when sub-advances are contemplated:

Subject to the prior written approval of the Administering Office, funds from the Special Bank Account may be used by the Contractor to make advance payments or down payments to subcontractors and materialmen in advance of performance by the subcontractor or materialman. Such sub-advances shall not exceed _____ percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is required by the Administering Office, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the sub-advance, with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplementary hereto) between the Government, the Contractor and the Bank, may be considered as adequate security for such sub-advance.

(18) *Covenants.* The following are examples of some special protective provisions (subject to modification to adapt to the circumstances of individual cases) that may be utilized when and to the extent deemed appropriate in particular cases.

During the period of time that advance payments may be made hereunder, and so long as any such advance payments remain unliquidated, the Contractor shall not, without the prior written consent of the Administering Office—

(a) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the contractor now owned or hereafter acquired by it, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(b) Sell, assign, transfer or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(c) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Administering Office incident to the establishment of these advance payment provisions;

(d) Sell, convey or lease all or a substantial part of its assets;

(e) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(f) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(g) Permit a writ of attachment or any similar process to be issued against its property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(h) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to its directors, officers, or key employees in excess of existing rates of pay-

ments or of rates provided in existing agreements, in connection with which notice has been given to the Administering Office, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder, or employ any person at a rate of compensation in excess of $_____ per annum;

(i) Make any substantial change in management, ownership, or control of the corporation;

(j) Merge or consolidate with any other firm or corporation, change the type of its business or engage in any transaction outside the ordinary course of its business as presently conducted;

(k) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(l) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;

(m) Make or covenant itself to make capital expenditures exceeding in the aggregate $_____;

(n) Permit its net current assets, calculated in accordance with generally accepted accounting principles, to become less than $_____; or

(o) Make any payments on account of the obligations listed below, except in the manner and to the extent herein provided.

SUBPART E—PROGRESS PAYMENTS BASED ON COSTS

§ 82.49 *Scope.* This subpart provides uniform policies, procedures and forms for progress payments based on costs. Appendixes 1, 2, 3 and 5 to this part apply to this subpart E.

§ 82.49–1 *References.* Sections 82.1, 82.2, 82.3, 82.4, 82.9, 82.10, 82.11–82.18, inclusive, and 82.37 (g), and Appendixes 1, 2 and 3, apply to all progress payments, whether based on costs or on a percentage or stage of completion.

§ 82.49–2 *Exclusions.* This subpart does not apply to (a) cost-reimbursement type contracts or (b) contracts for construction (as defined in § 10.101–6 of Subchapter A), or for shipbuilding or ship conversion, alteration or repair, when such contracts provide for progress payments based on a percentage or stage of completion.

§ 82.49–3 *Contract coverage.* Except as provided in § 82.49–2, this subpart applies to all contracts (as defined in § 1.201–6 of subchapter A) providing for progress payments.

§ 82.50 *Standards.* Basic standards for progress payments are stated in Appendixes 2 and 5. These standards apply to all new procurement, and also to all changes concerning progress payments (§ 82.63–5). Parts III and V of Appendix 5 also apply to existing contracts, whenever consistent therewith. See also § 82.17, and particularly paragraphs (A), (B) and (C) of Part III of Appendix 2.

§ 82.51 *Percentage or stage of completion.* Progress payments based on a percentage or stage of completion will be confined to contracts for construction (as defined in § 10.101–6 of subchapter A of this chapter), shipbuilding and ship conversion, alteration or repair. For all other contracts, including any separate contracts for engines, machinery, equipment or other components for ships, the only types of progress payment provisions will be those based on costs, as authorized herein. However, on existing contracts which provide for progress payments based on a percentage or stage of completion, it is not required that provision for progress payments based on costs be substituted in connection with future amendments, supplements or modifications, if such substitution is found impracticable. (See § 82.63–1.)

§ 82.52 *Accounting system and controls.* The contractor's accounting system and controls must be adequate for the proper administration of progress payments. If the contractor's accounting system and controls have been found (by experience or by one of the military audit agencies) to be sufficient and reliable for segregation and accumulation of contract costs, no further examination should be necessary so long as the efficiency and reliability of the contractor's system and controls are maintained. In all doubtful cases, including contracts with contractors with whom a military audit agency has had no experience within the next preceding twelve months, the adequacy of the contractor's accounting system and controls shall be determined, and any necessary changes accomplished, before inclusion of a progress payment clause in a contract. For this purpose, the services of the military audit agencies should be utilized to the greatest extent practicable.

§ 82.53 *Information required.* The information required to support a contract provision for progress payments is that which is found necessary under the circumstances of each case to establish that the case complies with this Subpart E of this part, including the standards of the applicable one of Part III or Part IV of Appendix 5. See also, § 82.15 and § 1.307 of Subchapter A.

§ 82.54 *Indefinite quantity contracts.* For indefinite quantity contracts, contemplating requisitions, delivery orders, work orders, task orders, job orders or their equivalent, if the contractor meets all other requirements for customary progress payments (Appendix 5), the decision as to whether progress payments come within the customary category will depend upon estimates of the amount of work expected to be done, and the production lead time expected to be necessary for the major part of the work anticipated. In these cases, provision for progress payments in the indefinite quantity contract may be deemed customary if the amounts involved, and the production lead time, will result in the substantial equivalent of the customary progress payment described in Appendix 5. The standards for unusual progress payments govern when progress payments are not of the customary type.

§ 82.54–1 *Administration.* When progress payments are provided in the cases mentioned in § 82.54, such as indefinite quantity contracts for overhaul or maintenance, (a) the contract price is deemed to be the total of the amount of requisitions, delivery orders, work orders, task orders or their equivalent issued under the basic contract, (b) costs for progress payment purposes are the costs allocable to all such requisitions, etc., and (c) payments and liquidations will be handled in the same way as if all such requisitions, etc. constituted work under a single fixed price type contract.

§ 82.55 *Advance payments.* When advance payments and progress payments are authorized in the same contract, progress payment percentages will not exceed 90 percent of direct labor and material costs or 75 percent of total costs, whichever may be applicable.

§ 82.56 *Formal advertising.* Whenever, incident to formal advertising, the Contracting Officer considers (a) that the period between the beginning of work and the required first production delivery will exceed six months, or (b) that progress payments will be useful or necessary by reason of unusual circumstances that will involve substantial accumulation of pre-delivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large pre-delivery accumulation of materials, purchased parts or components) the invitations for bids shall state that upon written request by the prospective contractor a progress payment clause (to be included in the invitations for bids or identified by appropriate reference therein, and to be the appropriate one of the contract clauses at 75 percent of total costs or 90 percent of costs of direct labor and material) will be included in the contract at the time of award. These invitations for bids providing for progress payments shall also state that bids including requests for progress payments will be evaluated on an equal basis with those not including requests for progress payments.

§ 82.56–1 The standards and procedure prescribed by the first two paragraphs of Part IV of Appendix 5 will not apply to the cases mentioned in § 82.56.

§ 82.57 *Use of progress payments by Contractors.* It is expected that the contractor will use the progress payments made by the Government, or equivalent amounts of money, to pay the costs incurred in the performance of the contract under which progress payments are made.

§ 82.58 *Definitions.* As used herein, the following terms have the meanings set forth below.

§ 82.58–1 *Progress payments.* See § 82.10. The term "progress payments" must be distinguished from "partial payments". The term "partial payments" describes only (1) payments for partial deliveries accepted by the Government under a contract, or (2) partial payments on contract termination claims.

§ 82.58–2 *Customary progress payments.* See Part III of Appendix 5.

§ 82.58–3 *Unusual progress payments.* See Part IV of Appendix 5.

§ 82.58–4 *Costs.* Costs include all expenses of contract performance which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and not excluded by the contract. The term "costs" includes "incurred costs" when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business. It may also include incurred costs, after such delinquency, to the extent provided in § 82.71–4.

§ 82.58–5 *Incurred costs.* Incurred costs are those costs identified through the use of the accrual method of accounting and reporting. As to invoices, incurred costs include only invoices for completed work to which the prime contractor has acquired title, for materials delivered (to which the prime contractor has acquired title), for services rendered, and for costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title, and paid invoices for progress payments to subcontractors (when such progress payments are specifically provided for by the prime contract), all properly recorded on the books of the contractor and identified with the contract. Costs incurred include costs of direct labor, direct material, and direct services identified with and necessary for the performance of the contract, and also all properly allocated and allowable overhead (indirect) costs as shown by the books of the contractor.

§ 82.58–6 *Unliquidated progress payments.* Unliquidated progress payments are the aggregate sum of all progress payments made, less the aggregate sum of amounts applied to reduce progress payments.

§ 82.58–7 *Contract price.* The term contract price means the total amount fixed by the contract (other than any portion of the contract specifically providing for cost reimbursement only), as amended, to be paid for complete performance of the contract. If the contract provides for escalation or for redetermination of price, this term means the initial price until changed and not the ceiling price. If the contract is of the incentive type, this term means the initial or target price until changed, and not the ceiling or maximum price. For letter contracts and similar preliminary contractual instruments, this term means the maximum expenditure authorized by the contract, as amended.

§ 82.58–8 *Amendments, supplements and modifications.* The terms "amendment", "supplement", and "modification" are used interchangeably, and wherever one of these terms is used it includes the others. The terms "separate new contracts", and "separate contracts", as used herein, do not include "amendments".

§ 82.58–9 *Stronger and larger contractors.* The term "stronger and larger contractors", as used in the last sentence of Part III of Appendix 5, does not include small business concerns.

§ 82.58–10 *Deviation.* The term "deviation" means (a) any change, addition to, or deletion from the contract clauses and certificate forms required by this Subpart E, (b) any contract provision, outside the progress payment clause, which would have the effect of altering or changing the effect of the progress payment clauses provided herein, and (c) any variation from this part.

§ 82.59 *Contract clauses.* Except as otherwise provided in § 82.63 one of the following progress payments clauses shall be used whenever progress payments are to be made to a contractor based upon a percentage of costs, whether or not the contract schedule provides for reimbursement of progress payments to subcontractors. (See § 82.59–3.)

§ 82.59–1 *Total costs clause.*

Progress Payments. Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of Amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 75 percent of the amount of the Contractor's total costs incurred under this contract plus (ii) to the extent, if any, provided in the Schedule, the amount of the progress payments made by the Contractor to its subcontractors and remaining unliquidated; all less the sum of previous progress payments.

(2) The Contractor's total costs shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 75 percent of the costs mentioned in (a) (1) (i), above, plus any unliquidated progress payments mentioned in item (a) (1) (ii) above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or, (ii) 75 percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(4) The aggregate amount of progress payments made shall not exceed 75 percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination For Convenience of the Government", all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 75 percent[1] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) *Reduction or Suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a) (1).

(d) *Title.* When any progress payment is made under this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling"; nondurable (i. e., non capital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids not included within the definition of special tooling in such "Special Tooling" clause; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the

[1] For lower percentage for this paragraph, see Part IV of Appendix 2.

Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) *Risk of Loss.* Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) *Control of Costs and Property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports—Access to Records.* Insofar as pertinent to the administration of this clause, the Contractor will (i) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (ii) give the Government reasonable opportunity to examine and verify its books, records and accounts.

(h) *Special Provisions Regarding Default.* If this contract is terminated pursuant to the clause entitled "Default", (i) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (ii) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default", title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) *Reservations of Rights.* The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of its obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

§ 82.59–2 *Direct labor and materials cost clause.*

Progress Payments. Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of Amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 90 percent of the amount of the Contractor's costs incurred of direct labor and material[1] only under this contract plus (ii) to the extent, if any, provided in the Schedule, the amount of progress payments made by the Contractor to its subcontractors and remaining unliquidated; all less the sum of previous progress payments.

(2) The Contractor's costs above-mentioned shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or, (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title, and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or, (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 90 percent of the costs mentioned in (a) (1) (i), above, plus any unliquidated progress payments mentioned in (a) (1) (ii), above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) ____ percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments. [*For percentage here and in (a) (4), see the first bracketed instruction in (b), below.*]

(4) The aggregate amount of progress payments made shall not exceed ____ percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination For Convenience of The Government", all progress payments shall be liquidated by deducting from any payment under the contract, other than advance or progress, the amount of unliquidated progress payments, or ____ per cent [*insert a percentage which is to 90 per cent as the amount of estimated costs forming the basis for progress payments is to the amount of the estimated total costs*] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. [*For percentage for this paragraph, lower than the percentage computed pursuant to the above instruction and Part III of Appendix 5, see Part IV of Appendix 2.*]

(c) *Reduction or Suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger preformance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is incurring costs, whether or not of the kinds eligible for progress payments under paragraph (a) (1) above, which are higher than the respective estimated costs used for establishing the liquidation percentage in paragraph (b) above, (v) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, or (vi) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(d) *Title.* (Same as paragraph (d) of "Total Costs" clause.)

(e) *Risk of Loss.* (Same as paragraph (e) of "Total Costs" clause.)

(f) *Control of Costs and Property.* (Same as paragraph (f) of "Total Costs" clause.)

(g) *Reports—Access to Records.* (Same as paragraph (g) of "Total Costs" clause.)

(h) *Special Provisions Regarding Default.* (Same as paragraph (h) of "Total Costs" clause.)

(i) *Reservations of Rights.* (Same as paragraph (i) of "Total Costs" clause.)

§ 82.59–3 *Schedule provision for progress payments to subcontractor.* Where it has been determined (see § 82.61) that the contractor shall be reimbursed for progress payments made to subcontractors, the following language shall be inserted in the Schedule of the contract, in connection with the use of one of the progress payment clauses set forth in §§ 82.59–1 and 82.59–2.

PROGRESS PAYMENTS TO SUBCONTRACTORS

(a) The Contractor shall be reimbursed in accordance with the clause entitled "Progress Payments" for all of the progress payments made by the Contractor to subcontractors under subcontract progress payment provisions which (i) are substantially similar to and as favorable to the Government as that clause (and no more favorable to the subcontractor than that clause is to the Contractor), and (ii) make all rights of the subcontractor with respect to all property to which the Government has title pursuant to the subcontract, subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(b) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to it hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor.

§ 82.60 *General instructions for progress payment clauses.* The instructions below apply to the clauses required by § 82.59 and set forth in §§ 82.59–1 and 82.59–2.

§ 82.60–1 *Contracting Officer.* The term "Contracting Officer" as used in this subpart means the Contracting Officer as defined in § 1.205–1 of subchapter A.

§ 82.60–2 *Variation in percentages.* The percentages stated in paragraph (a) (1) (i) of the clauses in §§ 82.59–1 and 82.59–2 are the normal percentages for the customary progress payments authorized by Part III of Appendix 5. Higher percentages may be provided in the manner and to the extent authorized by Part IV of Appendix 5. Lower percentages may be used in (a) (1) (i) of §§ 82.59–1 and 82.59–2 when agreed, and will be used for unusual progress payments when found adequate in accordance with the standards set forth in Part IV of Appendix 5.

§ 82.60–3 *Total cost basis; percentage other than 75 percent.* If a percentage other than 75 percent is specified in (a) (1) (i) of the total costs clause set

[1] Strike out "labor and" or "and material" if progress payments are limited to single direct cost.

forth in § 82.59–1, the percentage actually specified in (a) (1) (i) of the progress payment clause of the contract shall also be specified in (a) (3) (i), (a) (3) (ii), (a) (4) and (b) of the progress payment clause. (As to (b), see Part IV of Appendix 2.)

§ 82.60–4 *Limited cost basis; other percentages.* When the progress payment clause set forth in § 82.59–2 is used, the percentage actually specified in (a) (1) (i) of the progress payment clause of the contract will also be specified in (a) (3) (i). The percentage to be specified in (a) (3) (ii), (a) (4), and (b) of that clause will be computed in the manner provided in Part III of Appendix 5, except that a percentage higher than the percentage so computed may be specified in paragraph (b) if agreed. Subject to this exception permitting use of a higher percentage in (b) (or a lower percentage in (b) established pursuant to Part IV of Appendix 2), the percentage to be specified in (a) (3) (ii), (a) (4), and (b) will thus be a percentage which is to the percentage stated in (a) (1) as the amount of estimated costs forming the basis for progress payments is to the amount of estimated total costs of performance of the undelivered portion of the contract. This same principle will apply if a narrower cost basis, more limited than the cost basis stated in § 82.59–2, is utilized for progress payments. (See § 82.60–4.)

§ 82.60–5 *Cost basis less than direct labor and material costs.* Instead of the direct labor and material cost basis provided in § 82.59–2, a narrower and more limited cost basis for progress payments may be utilized for that clause, such as direct labor only, direct material only, or direct labor or material costs applicable only to certain specified items, or specified direct costs other than direct labor or material costs. Appropriate changes will be made in (a) (1) (i) of the clause set forth in § 82.59–2 when such a narrower and more limited cost basis is to be used. For example, if eligible costs are to be limited to direct material costs, the words "labor and" should be deleted from (a) (1) (i); or, if eligible costs are to be limited to direct labor costs, the words "and material" should be deleted from (a) (1) (i).

§ 82.60–6 *Other protective provisions.* When deemed reasonably necessary for the protection of the Government, the clauses set forth in §§ 82.59–1 and 82.59–2 may be supplemented by additional protective provisions, such as personal or corporate guarantees, subordinations or stand-bys of indebtedness, special bank accounts, and other protective covenants of the kinds outlined in item 18 of § 82.48–2.

§ 82.60–7 *Liquidation percentages.* (a) Liquidation percentages shall conform to Part III of Appendix 5 except as authorized by Part IV of Appendix 2.

(b) In the application of paragraphs A and B of Part IV of Appendix 2, when progress payments are at the rate of 75 percent of all costs, the minimum liquidation percentage of 70 percent would not apply if the estimated profit rate is less than 7.3 percent of total costs. If, for example, the estimated profit rate is 5 percent of total costs, the minimum liquidation percentage permitted by Part IV of Appendix 2 would be approximately 71.5 percent. At this 5 percent profit rate, assuming (1) price $105, (2) costs $100, and (3) progress payments $75, this minimum liquidation rate of 71.5 percent would be necessary for recovery of the $75 or progress payments from the $105 delivery billing (75÷105=71.5 percent, and 0.715× $105=$75.07). The same principles are applicable when, pursuant to paragraph C of Part IV of Appendix 2, a liquidation rate lower than the 70 percent minimum is to be established. For example, assuming an established profit rate of 8 percent of total costs of items for which final prices have been established, the minimum liquidation rate for those items would be 69.5 percent when progress payments are at the rate of 75 percent of total costs. Assuming, (1) fixed price $108, (2) costs $100, and (3) progress payments $75, the calculation would be: 75÷108=0.6944, and (rounding this upward to 0.695), 0.695×$108= $75.06.

(c) Part III of Appendix 5 provides the standards, and gives an example, for establishing the minimum liquidation percentage when progress payments are to be at 90 percent of costs of direct labor and material (or lesser percentages of more limited costs). In the application of paragraphs A and B of Part IV of Appendix 2, when progress payments are at the rate of 90 percent of costs of direct labor and material, examples of the minimum liquidation rates are—

(1) When costs of direct labor and material are 70 percent of total costs, and the profit rate is 5 percent of total costs, the minimum liquidation percentage would be 60 percent. Assuming price $105, costs $100, costs of direct labor and material $70, and progress payments $63, then 63÷105=60 percent. Application of the 60 percent liquidation percentage to the delivery price of $105 recovers the $63 of progress payments.

(2) On assumptions the same as example (1), above, except that costs of direct labor and material are computed at 80 percent of total costs ($80 of the total costs of $100), so that progress payments on the item are $72 (90 percent of $80), the minimum liquidation percentage would be 68.6 percent (72÷105=68.6 percent, i. e., 68.57 percent rounded upward to 68.6 percent). Application of this 68.6 percent liquidation percentage to the delivery price of $105 recovers $72.03 against the $72 of progress payments.

(d) In line with the standards set for progress payments based on 75 percent of all costs, calculation of minimum liquidation rates pursuant to paragraphs A and B of Part IV of Appendix 2, when progress payments are at 90 percent (or lesser percentage) of costs of direct labor and material (or costs more limited), will not take into account any amount of profit that exceeds 7.3 percent of total costs. Thus, on example (1) next above, (assuming profit rate of 7.3 percent of costs or any greater rate), the minimum liquidation percentage would be 58.72 percent (63÷107.3=58.72 percent).

§ 82.61 *Subcontracts.* Progress payments to subcontractors may be included in the base for progress payments to prime contractors only when provision therefor is made in the prime contract Schedule, in the manner set forth in § 82.59–3. Except as provided below, this provision may be included in the Schedule of the prime contract only if the contractor agrees in writing that its progress payments to subcontractors, to be included in the base for progress payments pursuant to this Schedule provision and paragraph (a) of §§ 82.59–1 or 82.59–2, will be limited to those subcontracts in which there is expected to be a long "lead time", approximating six months or more between the beginning of work and the first delivery, for subcontractors which in the opinion of the prime contractor meet the standards for customary progress payments outlined in Part III of Appendix 5. However, this limitation does not apply to subcontracts providing for "unusual" progress payments on prime contracts as described in Part IV of Appendix 5, when the inclusion of such unusual progress payments on the subcontracts has been approved in the manner set forth in Part IV of Appendix 5.

§ 82.61–1 *Subcontractor progress payments.* When provision is made in the contract Schedule for inclusion of unliquidated progress payments made to subcontractors, the percentage for reimbursement on account of progress payments made to subcontractors will ordinarily be stated at 100 percent, i. e. "all". However, in the discretion of the Contracting Officer, a percentage less than 100 percent may be specified in this provision of the Schedule. When a percentage less than 100 percent is so specified, this lesser percentage will control the amount of progress payments to be made pursuant to (a) (1) (ii) of §§ 82.59–1 and 82.59–2 and the maximum limit on unliquidated progress payments on account of unliquidated progress payments to subcontractors under (a) (3) (i) of §§ 82.59–1 and 82.59–2.

§ 82.61–2 *Adaptation of uniform clause for subcontracts.* Contracting Officers are not required to review or approve subcontracts merely because they provide for progress payments. However, they shall check and review subcontracts providing for progress payments to the extent appropriate in the ordinary course of administration of the progress payment clause of prime contracts. The duty rests on the prime contractor to see to it that its subcontracts providing for progress payments, to be included in the base for progress payments pursuant to the Schedule provisions set forth in § 82.59–3, conform to these provisions of the contract Schedule (§ 82.59–3). In adapting the clauses set forth in §§ 82.59–1, 82.59–2 and 82.59–3 for use in subcontracts, to conform to § 82.59–3, the subcontract progress payment clause should have appropriate changes to reflect the position of the prime contractor as purchaser and of the subcontractor as vendor, and to indicate that the progress

payments under the subcontract are being made and administered by the prime contractor. However, the title provision of the progress payment clause of the subcontract shall provide for the vesting of title directly in the Government, as set forth in §§ 82.59–1 (d) and 82.59–2 (d), and the subcontract will not substitute the prime contractor for the Government as the holder of title under that paragraph of the subcontract. In that title paragraph of the subcontract, reference to the prime contractor should, however, be substituted for the word "Government" in the parenthetical expression concerning drawings and technical data, and also in the second sentence of the paragraph. In the subcontract counterpart of §§ 82.59–1 (g) and 82.59–2 (g) entitled "Reports—Access to Records" the references to "Contracting Officer" and "Government" should not be deleted, but may in each case be expanded so as to refer to the "Contracting Officer or the prime contractor", (§§ 82.59–1 (g) (i), 82.59–2 (g) (i)) and to the "Government or the prime contractor" (§§ 82.59–1 (g) (ii), 82.59–2 (g) (ii)). With regard to the subcontract counterpart of the "Special Provisions Regarding Default" (§§ 82.59–1 (h), 82.59–2 (h)) only the substance of the first three lines of that paragraph (with reference to the prime contractor substituted for "Government"), is required for conformity to the provisions of § 82.59–3.

§ 82.62 *Letter Contracts.* When progress payments are to be made under letter contracts or similar preliminary contractual instruments, incorporation of one of the clauses set forth in §§ 82.59–1 and 82.59–2 is required except as follows:

(a) Section 82.59–1 (a) (4) or § 82.59–2 (a) (4) will be replaced by a provision limiting the aggregrate amount of progress payments made under the letter contract to a stated amount, not exceeding 75 percent of the maximum liability of the Government under the letter contract (or such lesser percentage as may be applicable in accordance with the last two sentences of § 82.60–4 if the clause set out in § 82.59–2 is to be used). Separate limits may be prescribed for separate specified parts of the work.

(b) Until unit delivery billing prices are specified, § 82.59–1 (b) or § 82.59–2 (b), concerning liquidation will not be operative, and will be supplemented by the additional provision set out below:

Progress payments made hereunder shall be liquidated in the following manner, unless previously liquidated pursuant to paragraph (b):

(1) If this letter contract shall be superseded by a fixed price-type contract (Part 3, Subpart D), unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the first progress or other payments which shall be made under such contract.

(2) If this letter contract shall be superseded by a cost-reimbursement type contract, progress payments made hereunder shall be liquidated by deducting the unliquidated amount thereof from the first payments which shall be made under such cost-reimbursement contract.

(3) If this letter contract shall not be superseded by a contract calling for the furnishing of all or part of the articles or services covered hereby, unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the amount payable under the provisions of the Termination clause for this letter contract.

(4) If this letter contract shall in part be terminated and shall in part be superseded by a contract, the unliquidated progress payments made hereunder shall be allocated by the Government for the purpose of liquidation to the terminated portion of the letter contract and to the superseding contract in such proportions as the Government shall deem to be equitable, and the part of such progress payments allocated to each shall be liquidated in accordance with the applicable provisions of subdivisions (1), (2) and (3) of this paragraph.

(5) If the method of liquidating progress payments provided above shall not result in the full liquidation thereof, the Contractor shall forthwith pay the unliquidated balance to the Government upon demand.

(c) Any superseding definitive contract will contain appropriate provisions, carried forward from the letter contract, for liquidation of progress payments made under the preliminary instrument. When the superseding contract provides for progress payments, the progress payment clause will be supplemented by further provision as follows:

The costs, previous progress payments, aggregate progress payments, and unliquidated progress payments, mentioned in paragraph (a) of this progress payments clause, include the costs incurred and progress payments made under the letter contract which has been superseded by this contract.

§ 82.63 *Transition.* Contracts in existence on the effective date of this Subpart E will continue to be administered in accordance with their provisions and the regulations in this part. The transition to uniform use of a progress payment clause set out in this part (§ 82.59) will be accomplished in an orderly and reasonable manner and as promptly as practicable, as set forth below.

§ 82.63–1 *Separate contracts.* To the greatest extent feasible, procurement effected after the effective date of this part, and involving the establishment or continuation of progress payments, will be accomplished by separate new contracts rather than by amendments of existing contracts. Separate new contracts (including definitive contracts superseding existing letter contracts and instruments effecting new procurement under existing basic or master agreements) that are entered into within 60 days after the effective date of this Subpart E need not use a clause set forth in § 82.59 if tentative agreement has been reached concerning a progress payment clause based on costs and conforming to Appendix 5.

§ 82.63–2 *Existing indefinite quantity contracts.* During the specified term of existing indefinite quantity contracts (not including any extension of such term) existing progress payment provisions conforming to Appendix 5 with regard to progress payment percentage and rate of liquidation (or with liquidation as authorized by Part IV of Appendix 2) do not need to be replaced, incident to new procurement under such contracts, by a clause set forth in § 82.59.

§ 82.63–3 *Supplements, amendments and modifications; when new clause not required.* When it is found necessary to effect new procurement by amendment of a contract (see § 82.63–1) already providing for progress payments based on costs, rather than by a separate contract, it is not required that the amendment include a clause set forth in § 82.59 if the progress payment clause already in the contract provides for progress payments not exceeding 75 percent of total costs or 90 percent of direct labor and material costs and also provides for liquidation conforming to Part III of Appendix 5 or Part IV of Appendix 2. However, in these cases, a clause set out in § 82.59 should be substituted for the existing progress payment clause whenever feasible.

§ 82.63–4 *Supplements, amendments and modifications; gradual operation of new clause.* (a) When a contract provides for progress payments at rates exceeding 90 percent of direct labor and material costs or exceeding 75 percent of total costs, and it is found necessary to accomplish additional procurement by an amendment rather than by a separate new contract (see § 82.63–1), the amendment should, whenever reasonable and practicable, substitute a clause set forth in § 82.59 for the progress payment clause of the contract, so as to limit all future progress payments on the entire contract to 75 percent of future total costs or 90 percent of future costs of direct labor and materials. When such substitution is made, substantially the following provision should be added:

For the purposes of paragraph (a) (1) of this clause, (i) progress payments made or to be made to the contractor on progress billings submitted to the Government on or before the date of this amendment (in the total amount of $_____), shall be excluded in computing the "sum of previous progress payments" and (ii) costs (and progress payments to subcontractors) (in the total amount of $_____), relating to the progress payments so excluded shall also be excluded in computing costs (and progress payments to subcontractors) eligible for progress payments under this amendment. The amount of progress payments unliquidated at the date of this amendment ($_____), and the amount of progress payments included in progress billings pending at the date of this amendment ($_____), aggregating ($_____), shall be liquidated at the rate of __ percent instead of the percentage stated in paragraph (b) of this clause. Paragraphs (a) (3) and (b) of this clause shall not apply until liquidation of the aggregate amount of progress payments made or billed at the date of this amendment. Paragraph (a) (4) does not apply.

The expression "(and progress payments to subcontractors)" will be deleted if not applicable. Billings for progress payments pending at the date of the amendment will be paid in accordance with the progress payment clause in effect before the amendment. The rate for liquidation of unliquidated progress payments outstanding and to be outstanding pursuant to progress billings pending at the date of the amendment will be specified in accordance with the principles stated in Part III of Appendix 5 and Part IV of Appendix 2.

(b) When, in the circumstances described in paragraph (a) of this section, it is not reasonable and practicable to substitute a clause set forth in § 82.59 so as to limit all future progress payments on the entire contract to 75 percent of costs or 90 percent of costs of direct labor and material as the case may be, the amendment (incorporating a clause set forth in § 82.59, with percentages as specified in Appendix 5 and Appendix 2) ordinarily will provide for segregation of costs attributable to work under the amendment, segregation of payments under the amendment, and administration of progress payments under the amendment on the same basis as if the amendment were a separate new contract. However, when it is found that it will be expensive or otherwise impracticable to separate costs of deliveries attributable to the amendment from those attributable to the other portion of the contract, the amendment will provide for one or the other of the arrangements described in paragraphs (c) and (d) of this section.

(c) When the last sentence of paragraph (b) of this section, is applicable (and paragraph (d) of this section, is not applied), the amendment will include a clause set forth in § 82.59 (with percentages conforming to Appendix 5 and Appendix 2), with provision that it will become operative as herein provided. The amendment will provide for continuation of progress payments pursuant to the existing progress payment clause and for their liquidation pursuant to Part III of Appendix 5 or Part IV of Appendix 2, until (1) the aggregate amount of progress payments made under the contract, including progress payments previously made, equals (2) the aggregate amount of progress payments that would have been made at the previously established rates if the contract had continued without this amendment (less reductions from time to time to reflect decreases in anticipated total progress payments, resulting from any partial termination of the contract); and (3) when the amount described in item (1), above, equals the amount described in item (2), above, future progress payments will be governed by the progress payment clause included in the amendment, except that liquidation of the amount of unliquidated progress payments then outstanding will continue at the higher rate required to conform to Appendix 5 or Appendix 2 until liquidation of such amount, and (a) (4) (§§ 82.59–1 (a) (4), 82.59–2 (a) (4)) will not apply.

(d) When the last sentence of paragraph (b) of this section, is applicable (and paragraph (c) of this section, is not applied), the amendment will substitute a clause set forth in § 82.59 instead of the existing progress payment provision, but with the percentage specified for future progress payments being a weighted average percentage arrived at by dividing the amount described in item (1), below, into the amount described in item (2), below (and with the special liquidation provision described in item (3), below):

(1) The total of all future costs, eligible for progress payments, expected to be incurred for performance of the contract and this amendment.

(2) The sum of (i) the total of all future costs, eligible for progress payments, that would have been incurred for performance of the contract without this amendment (not including costs expected to be incurred on account of this amendment) multiplied by the percentage for progress payments theretofore specified in the contract, and (ii) the total of all future costs, eligible for progress payments, expected to be incurred solely on account of this amendment, multiplied by not more than 75 percent (or by not more than 90 percent if eligible costs are limited to direct labor and material).

(3) When such substitution is made, special provision will be added to require that (1) the unliquidated progress payments outstanding at the date of the amendment (and any progress payments made thereafter on progress billings pending at the date of the amendment) will be liquidated in the manner outlined in Part III of Appendix 5 or Part IV of Appendix 2, e. g., at 90 percent of delivery billings if those progress payments had been made at 90 percent of costs, or at percentages authorized by Part IV of Appendix 2, and (2) that liquidation at the percentage specified in the progress payment clause substituted by the amendment will begin when liquidation at the higher rate mentioned in item (1), next above, has been accomplished.

§ 82.63–5 *Supplements, amendments and modifications concerning progress payments.* Amendments, supplements, and modifications of existing contracts which increase the rate or percentage of progress payments, or enlarge the base for progress payments, or reduce the rate of liquidation of progress payments, or make new provision for progress payments shall conform to these regulations and in particular to § 82.59.

§ 82.64 *Contract financing office clearance.* The following types of provisions for progress payments require submission through channels and prior approval by the contract financing office (§ 82.16):

(a) Those involving progress payments at rates exceeding 90 percent of direct labor and material costs or exceeding 75 percent of total costs, except as authorized by § 82.63–4;

(b) Those involving deviations, as defined in § 82.58–10;

(c) Those exceptional cases, involving unusual risks, described in § 82.16;

(d) Those involving contractors as to whom it is known that within the preceding twelve months (1) request for advance payments has been denied for financial reasons by the contract financing office, or (2) application for guarantee of a loan to the contractor or for increase or extension of maturity of a guaranteed loan, has been disapproved for financial reasons, or (3) an approved application for guarantee of a loan or for advance payment to the contractor has lapsed or has been withdrawn; and

(e) Those involving contractors named on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List".

§ 82.65 *Coordination.* The coordination described in the third paragraph of Part IV of Appendix 5 is required for all cases mentioned in paragraphs (a) and (b) of § 82.64.

§ 82.65–1 *Control lists.* To give effect to § 82.64 (d), pertinent information will be exchanged between the several contract financing offices, and distributed through normal channels to Contracting Officers.

§ 82.65–2 *Hold-up list.* To give effect to § 82.64 (e), and for other proper purposes, the "Hold-Up List" there mentioned will be distributed through normal channels to Contracting Officers.

§ 82.66 *Contractor's Request.* All invoices for progress payments on contracts containing the progress payment clause set out in § 82.59 (with or without the modifications authorized by § 82.63–4), and on contracts containing any deviation from that clause approved pursuant to §§ 82.64 and 82.65, will be supported by the contractor's request in the following form,[1] with any supporting information that may be reasonably required. This form of request will also be utilized as soon as practicable (unless incompatible with contract provisions) in connection with progress payments based on costs under existing contracts and other contracts (§§ 82.63–1, 82.63–2, 82.63–3) not containing one of the progress payment clauses set out in § 82.59. The use of this form is subject to the instructions which will be included on reproductions of the form.

§ 82.67 *Audit.* For the making of progress payments, principal reliance will be placed on the adequacy of the contractor's accounting system and controls (§ 82.52) and on the reliability of the contractor's certificates. To conserve administrative effort, hold down expense, and promote prompt payment of proper progress billings, audit before the making of progress payments will be kept to the minimum necessary for the protection of the interests of the Government. Pre-audit, that is, audit before the making of a progress payment, will be limited to those situations in which there is reason to question the reliability or accuracy of the contractor's certificate, or reason to believe that the contract will involve a loss. Post-review or post-audit will be made when considered desirable by the Contracting Officer to determine the validity of any progress payment made on the contractor's certifications.

§ 82.68 *Administration; general.* Progress payment clauses cannot be self-executing, and require careful administration to insure against over-payments and losses. It is necessary for adequate supervision of progress payments that the administering office keep itself informed concerning the contractor's overall operations and financial condition, since difficulties encountered and losses suffered in operations outside the partic-

[1] Filed as part of original document.

ular progress payment contract may affect adversely the performance of that contract and the liquidation of the progress payments. For contracts with those contractors whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding, or whose management is of doubtful capacity or whose accounting controls are found by experience to be weak, or who are encountering substantial difficulties in performance, full information concerning both the progress under the contracts involved (including the status of subcontracts), and concerning the contractor's other operations and financial condition, should be obtained and analyzed at frequent intervals, with a view to the better protection of the interest of the Government and the taking of such action as may be proper to make contract performance more certain. If there is reason to doubt only minor elements of the costs involved in a progress billing, only the doubtful amounts should be withheld, subject to later adjustment, and the amount clearly due should be paid without awaiting resolution of the differences. So far as practicable in each case, all cost problems, particularly those involving indirect costs, of a kind likely to create disagreements in future administration of the contract, should be identified and resolved at the inception of the contract. See further, the second paragraph of Part V of Appendix 5.

§ 82.69 *Adjustments; retroactive price reduction; refunds.* When a retroactive price reduction has been made effective, i. e., by supplemental agreement or by unilateral determination pursuant to the price redetermination provision of the contract, the last sentence of §§ 82.59–1 (b) and 82.59–2 (b) requires adjustments so that the amount of unliquidated progress payments and the amounts paid or payable for supplies or services accepted will give effect to the price reduction. In this situation, the retroactive price reduction means that too much has been paid or billed for deliveries, and that from those delivery billings too much has been applied as a reduction of the unliquidated progress payment balance. The necessary adjustments would be (a) recomputation of total cash delivery payments on the basis of the reduced billing price resulting from the retroactive price reduction, and repayment by the contractor of the difference between the total recomputed payments and the total cash delivery payments that had been made, and (b) increase of the unliquidated progress payment balance by the excess of the total amounts previously applied to reduce the unliquidated progress payment balance over the amounts that would have been applied to reduce the unliquidated progress payment balance if the reduced delivery prices had been in effect from the date from which the redetermination is applicable. This same principle of upward adjustment of the unliquidated progress payment balance is also applicable in connection with interim refunds made by contractors pursuant to the provisions of incentive and price redetermination contracts, and in connection with voluntary refunds on such contracts.

§ 82.70 *Maximum unliquidated amount.* In all cases where the contract price is sufficient to cover all costs of complete performance, and liquidation of progress payments is effected in accordance with § 82.59–1 (b) or § 82.59–2 (b), the amount of unliquidated progress payments will never exceed the maximum limit provided by § 82.59–1 (a) (3) (i) or § 82.59–2 (a) (3) (i), unless liquidation percentages have been based on cost estimates that are less than actual costs. In such cases, if the contract involves a profit to the contractor, the actual unliquidated progress payment amount will always be less than the maximum limit stated in §§ 82.59–1 (a) (3) (i) and 82.59–2 (a) (3) (i) after the first delivery payment unless liquidation percentages have been based on cost estimates that are less than actual costs. So long as performance is satisfactory and there is no reason to believe that the contract will involve a loss to the contractor or that a liquidation rate fixed pursuant to Part IV of Appendix 2 or § 82.59–2 (b) is too low, there will be no need or reason to verify the relationship of the amount of unliquidated progress payments to the maximum limit prescribed by §§ 82.59–1 (a) (3) (i) and 82.59–2 (a) (3) (i). However, when the rate or quality of performance is unsatisfactory, or the rate of rejections is unduly high, or there is excessive wastage or spoilage, or it appears that unduly low costs have been attributed by the contractor to delivered items, or a loss to the contractor is otherwise indicated, or that the liquidation rate is too low, careful examination should be made to determine whether or not the unliquidated progress payments exceed the maxmium amount permitted by § 82.59–1 (a) (3) (i) or § 82.59–2 (a) (3) (i). The services of the cognizant audit agency should be utilized to the fullest extent available, together with the services of qualified cost analysis and engineering personnel as required. See § 82.66, Section III, General Instructions,[1] above, and § 82.71–6.

§ 82.71 *Suspension or reduction of payments; general.* For standards to be followed, see the third paragraph of Part V of Appendix 5. Sections 82.59–1 (c) and 82.59–2 (c) provide that progress payments may be suspended or their rate of liquidation may be increased, whenever any of the circumstances there described are found to exist. The rights reserved to the Government by those paragraphs are for the purpose of protecting the interests of the Government, fostering satisfactory contract performance, and guarding against overpayments and losses. Those paragraphs will be administered with these purposes in mind. Action taken pursuant to those paragraphs will be fair and reasonable under the circumstances of particular cases, and supported by substantial evidence. Findings made under those paragraphs will be in writing.

[1] DD Form 1195—filed as part of original document.

§ 82.71–1 *Failure to comply with contract.* Except for the purpose of correcting overpayments or obtaining amounts due from the contractor, action will not be taken pursuant to § 82.59–1 (c) (i) or § 82.59–2 (c) (i) for failure to comply with a requirement of the contract, if such failure has resulted solely from causes beyond the control and without the fault or negligence of the contractor. For examples of such causes, see paragraph (b) of the Default clause in § 7.103–11 (b) of Subchapter A of this chapter. Compliance with the material requirements of the contract, within the meaning of §§ 82.59–1 (c) (i) and 82.59–2 (c) (i) includes compliance with all provisions of the progress payment clause.

§ 82.71–2 *Unsatisfactory financial condition.* If unsatisfactory financial condition, or failure to make progress, endangering contract performance, as described in § 82.59–1 (c) (ii) or § 82.59–2 (c) (ii), is found to exist, arrangements reasonably assuring contract completion without loss to the Government will be required in connection with the making of further progress payments and the making of other payments so long as progress payments are unliquidated. Within the meaning of §§ 82.59–1 (c) (ii) and 82.59–2 (c) (ii), performance of the contract includes full liquidation of progress payments. Further payments will be withheld so long as any progress payments remain unliquidated, only upon full consideration of all pertinent facts, and upon concluding that further payments will serve to increase the probable loss to the Government.

§ 82.71–3 *Excessive inventory.* When inventory allocated to the contract is found substantially to exceed reasonable requirements (§§ 82.59–1 (c) (iii) and 82.59–2 (c) (iii)), the simplest form of adjustment to correct or avoid overpayment will be to eliminate the costs of such excess inventory from the costs shown in item 7 [1] of the contractor's request set out in § 82.66. If that is not regarded as sufficient in a particular case, or if the adjustment in item 7 of the request will not accomplish full correction, additional deductions, to the extent necessary for the correction, should be made, to liquidate progress payments, incident to billings for payments other than progress payments. Transfer of such excess inventory from the contract should also be required. The expression "reasonable requirements" includes a reasonable accumulation of inventory for future use to assure continuity of operations.

§ 82.71–4 *Delinquency in payment of costs of performance.* The contractor's delinquency in payment of costs of contract performance in the ordinary course of business (§ 82.59–1 (c) (iv) or § 82.59–2 (c) (v)) may be an indication of unsatisfactory financial condition or other circumstances endangering contract performance and involving probability of loss to the Government. If such delinquency is not connected with poor financial condition that is so unsatisfactory as to endanger contract performance or to involve reasonably fore-

seeable loss to the Government, further progress payments and other payments will not necessarily be denied to protect the unliquidated progress payments and minimize risks of additional losses, and payments may be continued at the contract rate, or in reduced amounts, in connection with appropriate arrangements to (a) cure the contractor's delinquencies in payment of his costs of contract performance, (b) avoid further delinquencies, and (c) reasonably assure completion of the contract without loss to the Government. (See also, § 82.71–3.) Amounts claimed by subcontractors, suppliers and others, but disputed in good faith by the contractor, should not be considered delinquent until determined due by a court (or by arbitration if applicable). However, any such disputed amounts shall be excluded from costs of performance so long as they are disputed.

§ 82.71–5 *Fair value of undelivered work.* In connection with determining the relation of the amount of unliquidated progress payments to the fair value of the work accomplished on the undelivered portion of the contract (§ 82.59–1 (c) (v) or § 82.59–2 (c) (vi)) the principles stated in § 82.70 are applicable. In determining action, if any, to be taken, the Contracting Officer (utilizing available audit, engineering, inspection, and cost analyst services) will give full consideration to the degree of completion of contract performance, the quality and amount of work performed on the undelivered portion of the contract, the amount of work remaining to be done and the estimated costs of completion of performance, and the amount remaining unpaid under the contract. If the Contracting Officer finds that the fair value of the work done under the undelivered portion of the contract, in relation to the contract price, is less than the unliquidated progress payments, his actions will be governed by the principles stated in §§ 82.71–2 and 82.71–4. This fair value could not exceed the contract price of undelivered work under the contract, less the estimated total future costs of completion of the contract. When this fair value is found to be less than the amount of the unliquidated progress payments, all further payments on the contract will be controlled in such a manner as to hold the unliquidated progress payments within the fair value of the work done on the undelivered portion of the contract. See also, § 82.73–1.

§ 82.71–6 *Erroneous costs estimates.* When liquidation percentages (§§ 82.59–1 (b) and 82.59–2 (b)) lower than those called for by Part III of Appendix 5 are established pursuant to Part IV of Appendix 2, it may occur that actual costs and future costs of performance are higher than the estimated costs used to establish liquidation rates. In such cases (§§ 82.59–1 (c) (vi) and 82.59–2 (c) (iv)) appropriate increase of the liquidation percentage will be necessary to adjust for any underliquidation that may have occurred, to bring the amount of unliquidated progress payments within the limits of § 82.59–1 (a) (3) or § 82.59–2 (a) (3), and to assure the adequacy of future liquidations. Increase of the liquidation percentage will also become necessary even though Part IV of Appendix 2 has not been applied in fixing the liquidation percentage, when progress payments are based on costs of direct labor and material only (§ 82.59–2) or any limited cost base (§ 82.60–5), and actual costs forming the base for progress payments are higher than the estimated eligible costs used in establishing the liquidation percentage.

§ 82.72 *Report of adverse developments.* The required reports of adverse developments (§ 82.18) will include report of remedial or protective action taken or proposed. However, the filing of such reports shall not relieve the personnel responsible for administration of the contract from taking such action as is deemed proper, prudent, and beneficial to the Government.

§ 82.73 *Government title.* Since the clauses in § 82.59 give the Government title to all of the materials, work in process, and finished goods under contracts after the making of progress payments thereon, care should be taken to assure, to the extent reasonably necessary, that the title to the Government will be free of all encumbrances. The procedure in this respect will necessarily vary with the particular circumstances of individual cases. Ordinarily, in the absence of reason to believe that the Government title may be subject to encumbrance, the contractor's certificate will be relied on. If any arrangements or conditions are found that would impair the contractor's right of disposition of the property affected by the progress payments, appropriate arrangements should be made to establish and protect the Government title. The existence of any such encumbrance is a violation of the contractor's obligations under the contract.

§ 82.73–1 *Loss, theft, destruction or damage.* Sections 82.59–1 (e) and 82.59–2 (e) are not intended to apply to normal spoilage. The risk of loss as to property affected by the progress payment clause is on the contractor, except to the extent that by some special provision of the contract (such as that relating to aircraft in the open) the Government shall have expressly assumed the risk of loss. Such express assumption of risk by the Government is not made in the progress payment clause, the default clause, or the termination clause. Because of problems of administering the contract, especially those connected with property responsibility and inventory control, the risk of loss on property to which the Government holds title because of progress payments must be on the contractor to the same extent that it would be if the contractor held title to the property. This risk of loss carries with it the accompanying duty to repay to the Government the amount of unliquidated progress payments based on costs allocable to lost, stolen, or destroyed property or to the damaged portion of the property. If the Government has expressly assumed particular risks of loss, then, to the extent of such express assumption of risk by the Government, the contractor would not be obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property. See, however, §§ 82.59–1 (c) (v) and 82.59–2 (c) (vi), as to future payments on the contract after such loss, damage, theft or destruction.

§ 82.73–2 *Government-furnished property.* Contract provisions referring to or defining liability for Government-furnished property do not apply to property to which the Government shall have acquired title solely pursuant to the provisions of the progress payment clause (§ 82.59–1 (d) or § 82.59–2 (d)). Property to which the Government has acquired title solely pursuant to the progress payment clause is not subject to Appendixes B and C of the Armed Services Procurement Regulation (§§ 30.2 and 30.3 of subchapter A of this chapter).

§ 82.73–3 *Special tooling.* When the contractor furnishes special tooling, as defined in § 13.101–5 of subchapter A of this chapter, pursuant to a special tooling clause (§ 13.504 of subchapter A of this chapter), and such special tooling is not to be delivered to the Government as an end item under the contract, the handling and disposition of such special tooling will be governed by the special tooling clause of the contract, even though title to such special tooling is held by the Government pursuant to the progress payment clause of the contract.

§ 82.73–4 *Termination for convenience of the Government.* After the giving of notice of termination under contract provision for termination for the convenience of the Government, the property to which the Government has title pursuant to the progress payment clause and which is a part of termination inventory will be acquired or disposed of in accordance with the provisions of the termination clause of the contract and of applicable laws and regulations. The acquisition or disposition of such termination inventory shall be governed by the termination clause, even though title to all or a portion of such inventory is in the Government pursuant to the progress payment clause of the contract.

§ 82.73–5 *Scrap; excess property.* (a) In the course of proper performance of contracts, contractors are permitted to sell or otherwise dispose of current production scrap in the ordinary course of business, notwithstanding the Government's title under the progress payment clause. Permission of the Contracting Officer for such disposal of scrap is not required. With the permission of the Contracting Officer and on terms approved by him, contractors may also acquire or dispose of materials, inventories, or work in process to which the Government has acquired title pursuant to the progress payment clause of the contract, including transfer of such property to other work of the contractor. Proceeds of scrap disposal will be credited against the costs of contract performance. Costs allocable to property, other than scrap, so transferred from the contract will be eliminated

from the costs of contract performance, and the contractor shall be required to repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred from the contract.

(b) When (1) the contractor has completed all work called for by the contract, and (2) such work has been delivered to and accepted by the Government, and (3) progress payments made under the contract have been fully liquidated, and (4) the contractor has fully performed all its obligations under the contract (including the making of any payments to which the Government may be entitled under the contract, and including compliance with any other provisions of the contract, such as the termination clause or the special tooling clause or the Government-furnished property clause), any excess property remaining is to be regarded as having not been allocated or properly chargeable to the contract under sound and generally accepted accounting principles and practices, and thus outside the scope of the progress payment clause which would have vested title in the Government. Accordingly, the contractor holds title to such excess property and may deal with it as he desires.

§ 82.74 *Interpretations.* It is important that this part and the clauses set forth herein be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of this part arises within a procuring activity, and is regarded as being of general importance, if the circumstances reasonably permit the obtaining of an advance opinion on the question from departmental headquarters, the question should be presented, through procurement channels, to the procurement policy office of the department primarily interested, namely the Deputy Chief of Staff for Logistics, Office of Naval Material or Deputy Chief of Staff Materiel. If the circumstances do not reasonably permit request for advance opinion, report of an interpretation made (if regarded as important and of general interest for uniform application or interpretation of this part) should be made to the appropriate one of the procurement policy offices mentioned. Those offices are expected to take appropriate and timely action to obtain the views of interested offices of the other departments, including the contract financing offices (§ 82.16). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of this part, appropriate revision of this part will be considered in the manner outlined in § 82.3. In periods between any amendments of this part, it is contemplated that information on important interpretations of general interest, reported to or made at departmental headquarters, will be made available to procuring activities for dissemination to interested purchasing offices.

APPENDIX 1

[DoD Directive 7800.1, 30 October 1953]

DEFENSE CONTRACT FINANCING POLICY

References: (a) Memorandum dated 14 October 1950, from the Deputy Secretary of Defense, Subject: Defense Contract Financing Policy; (b) Joint Regulations (SR 715–35–5; NAVEXOS P–1006; AFR 173–133), dated 17 March 1952, Subject: Defense Contract Financing.

I. *Purpose.* The purpose of this directive, in additoin to the purpose stated below, is to revise reference (a) in order to (1) conform to Section 301 (a) of the Defense Production Act of 1950, as amended by Section 4 of the Defense Production Act Amendments of 1953, (2) revise the order of general preferences for forms of contract financing so as to place guaranteed loans ahead of progress payments, (3) eliminate mention of the Munitions Board and to make appropriate references to the Assistant Secretary of Defense (Supply and Logistics) instead of the Munitions Board, and (4) delete references to "direct loans".

II. *Cancellation.* Reference (a) is canceled.

III. *Policy.* The purpose of this directive is to establish basic contract financing policy for the Department of Defense to assure proper uniformity in policies, procedures, and forms, and to provide for application of the fundamental management principle of internal check and balance.

The term "financing" as used in this directive covers government guaranteed loans, advance payments, and progress payments (not including partial payments for delivery of one or more completed units called for under a contract) necessary for both performance and termination purposes, to the extent authorized by law (insofar as progress payments are concerned, it is contemplated that contract financing officers will participate in the development of appropriate standard contract provisions designed to avoid undue risk to the Government and would participate only in specific cases involving unusual financial arrangements and conditions).

Financing must support procurement and should be designed to aid not impede essential procurement, but should be so administered as to avoid the risk of monetary loss to the Government to the extent compatible with aiding essential procurement. To this end:

a. In terms of organization, the financing function should be separated from the procurement function, but close cooperation between the procurement and financing functions should be preserved at all times.

b. Procuring activities in placing contracts must give due regard to the financial capabilities of the supplier.

c. Government financing for production or services should be provided only if, and to the extent, reasonably required for prompt and efficient performance of government contracts and subcontracts.

d. Financing through guaranteed loans or advance payments may be made available to a supplier in cases where (1) the production or service is essential and (2) no alternative source is readily available without prejudice to the national defense. However, in connection with applications for guarantees of loans to be made to small-business concerns, and in connection with increases or extensions of maturities of guaranteed loans made to small-business concerns, and if they otherwise qualify, the factor of ready availability of alternative sources will not be considered, and the statement that the contracts or subcontracts involved cover materials or services which cannot be procured readily from an alternative source without prejudice to the national defense will be omitted from the Certificate of Eligibility.

e. It is recognized that adequate protection against the financial impact of termination of government contracts and subcontracts should encourage suppliers to invest their own funds in performance under such contracts and that financing for termination purposes will be an important aid to ultimate reconversion of industry to peacetime activities. Accordingly, termination financing may be made available, with appropriate protection of the Government's interest, either in connection with or independently of performance financing.

f. If a disagreement arises between the financing office and the interested procurement activity in any department as to whether, to what extent, or in what form, financing should be furnished, the matter will be referred immediately to and resolved in the higher echelons of authority responsible respectively for financing and procurement functions, subject to any issue being resolved ultimately by the Secretary of the Department concerned.

When financing through loans or advance payments is requested, the interested procuring activity shall certify that the case meets the requirements set forth in d above, and shall accompany such certification with adequate supporting data pertinent to the case.

Uniform financing policies and, so far as practicable, uniform procedures and standard forms are to be used by the Military Departments and, to the extent mutually agreed upon by the Military Departments, facilities and personnel are to be used in common. In formulating such policies, procedures, and forms, due regard shall be given to the desirability of following, so far as consistent with present circumstances, the policies and procedures developed during World War II.

In determining what form of financing shall be recommended or made available to suppliers, the following order of preference should generally be observed, recognizing that there may be valid exceptions in specific cases or classes of cases:

a. Private financing (without governmental guarantee).

b. Guaranteed loans (with financing institutions participating to an extent appropriate to the risk involved).

c. Progress payments.

d. Advance payments.

The responsibility for insuring uniform administration of financing in accordance with this directive shall be in the Assistant Secretary of Defense (Comptroller). Specific cases need not be referred to the Office of the Assistant Secretary (Comptroller), unless policy or important procedural problems are involved, and the day-to-day financing operations shall be the responsibility of the Military Departments.

Responsibility for financing in each Department shall be in the Under or Assistant Secretary responsible for the comptroller function, with the focal point of such activities at departmental headquarters although contract financing offices may be established at the operational level determined by that Department.

There shall be a Contract Finance Committee composed of a representative of the Assistant Secretary of Defense (Comptroller) as Chairman, a representative of the Assistant Secretary of Defense (Supply and Logistics) and two representatives of each Military Department (one representing procurement and one representing the contract finance office), which Committee shall meet upon call by the Chairman, upon his own initiative or when requested by a member of the Committee. This Committee shall advise and assist the Assistant Secretary of Defense (Comptroller) in assuring proper and uniform application of policies and the development of procedures and forms, and may from time to time recommend to the Secretary of Defense through the Assistant Secretary of Defense (Comptroller) and the

Assistant Secretary of Defense (Supply and Logistics) such further policy directives on the subject of financing as may appear desirable. For matters involving guaranteed loans, a representative of the Board of Governors of the Federal Reserve System may be invited to meet with the Committee. The Committee also may from time to time secure the advice of representatives of other branches of the Government and other persons and may invite such representatives and persons to its meetings.

The policies stated herein are effective immediately, and all departments and agencies concerned are directed to initiate action immediately to conform thereto. Appropriate conforming changes will be made in reference (b) and in the procedures of the Military Departments.

C. E. WILSON,
Secretary of Defense.

APPENDIX 2

[DoD Directive 7800.4, November 16, 1956]

DEFENSE CONTRACT FINANCING POLICY—SMALL BUSINESS CONCERNS

References: (a) Department of Defense Directive No. 7800.1, dated 30 October 1953, Subject: Defense Contract Financing Policy; (b) Department of Defense Directive No. 7840.1, dated 22 April 1954, Subject: Defense Supply Contract Financing—Progress Payments Based on Costs; (c) Department of Defense Directive No. 7830.1, dated May 31, 1956, Subject: Defense Contract Financing Policy—Advance Payments; (d) Joint Regulations (SR 715-35-5; NAVEXOS P-1006; AFR 173-133), dated 17 March 1952, Subject: Defense Contract Financing.

I. *Purpose.* It is the purpose of this directive (1) to insure that the need for advance or progress payments by contractors will not be treated as a handicap in awarding contracts, (2) to facilitate and accelerate the making of progress payments requested by small suppliers under Government contracts, (3) to emphasize the usefulness and desirability of providing proper contract financing assistance to small-business concerns, and (4) to supplement the above references for these purposes.

II. *Contract awards—Financing not a Handicap.* Prudent contract financing supports procurement and production and fosters the small-business policy by providing necessary funds to supplement other funds available to contractors for contract performance.

The need for advance payments or for progress payments or for a guaranteed loan (with reasonable percentage of guarantee) shall not be treated as a handicap in awarding contracts to those qualified contractors who are deemed competent and capable of satisfactory performance (ASPR 1-307; ASPR 2-406; paragraphs 204-205 of reference (d)). The ability of the contractor to perform the contract, including the availability of money or credit necessary for performance, must be reasonably assured in all cases. Within established policy, awards which are otherwise proper must not be deterred by the necessity for providing reasonable contract financing. A contractor deemed reliable, competent, capable and otherwise responsible, must not be regarded as any less responsible by reason of the need for reasonable contract financing provided or guaranteed by a military department. In selection of an appropriate method for provision of funds, contractors will not be expected to seek or obtain loans or credit from agencies of the Government outside the Department of Defense.

III. *Progress Payments.* A. Reference (b) contemplates that provision for the customary progress payments described in its Part III, subject to the standards and limitations therein provided, will be made as a matter of course when requested by contractors who are known (from experience or adequate pre-award investigation) to be reliable, competent, capable of satisfactory performance, in satisfactory financial condition, and to have an adequate accounting system and controls. The long "lead time" or preparatory period in these cases, normally approximating six months or more between the beginning of work and the first delivery, and the accompanying pre-delivery expenditures that may have a material impact on the contractor's working funds, are regarded as making this type of progress payment "reasonably necessary" within the meaning of reference (a), and as making the general preference for private financing, including guaranteed loans, not applicable to this class of cases. Hence, such customary progress payments will be provided in contracts upon request, subject to the limitation provided by Part III of reference (b), for discouragement of progress payments on relatively small negotiated contracts of the stronger and larger contractors who are not small-business concerns. If a small-business concern, and the contract involved, meet the standards for customary progress payments (Part III of reference (b)) the smallness of the contract shall not deter the making of provision for customary progress payments to such small-business concerns.

B. Requests for proposals shall state that contract provision for progress payments will be made in conformity with regulations.

C. Requests for proposals and invitations for bids shall specify that the need for advance or progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts. (When invitations for bids do not provide for progress payments, the words "or progress" will be deleted from the statement required by this Part III. C.)

D. Whenever, incident to formal advertising, the Contracting Officer considers (1) that the period between the beginning of work and the required first production delivery will exceed six months, or (2) that progress payments will be useful or necessary by reason of unusual circumstances that will involve substantial accumulation of pre-delivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large pre-delivery accumulation of materials, purchased parts or components) the invitations for bids shall state that upon written request by the prospective contractor a progress payment clause (to be included in the invitations for bids or identified by appropriate reference therein, and to be the appropriate one of the contract clauses at 75 per cent of total costs or 90 percent of costs of direct labor and material) will be included in the contract at the time of award. These invitations for bids providing for progress payments shall also state that bids including requests for progress payments will be evaluated on an equal basis with those not including requests for progress payments.

E. The standards and procedure prescribed by the first two paragraphs of Part IV of reference (b) will not apply to the cases mentioned in paragraph D of this Part III, next above.

F. In connection with requests for provision of progress payments, or advance payments, there must be timely action, no unwarranted delay, and no hesitation to make proper contract financing provisions.

IV. *Progress Payment Liquidation.* A. The method for liquidation of progress payments prescribed by Part III of reference (b) will not apply if, at the inception of a contract (on the basis of satisfactory cost estimates) or thereafter by amendment (based on satisfactory data on cost experience and estimated future costs) the parties shall agree on a percentage rate of liquidation which will (1) effect liquidation of the amount of progress payments involved in each invoice from which liquidation of progress payments is to be made (i. e., recovery of the portion of costs for which progress payments have been made), (2) permit payment to the contractor of not more than the cost of items delivered and accepted (less allocable progress payments) and his earned profit on those items, and (3) insure that unliquidated progress payments will not exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to that portion of the contract which has not been delivered, accepted and invoiced.

B. However, when progress payments are to be made at 75 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by reference (b) to the extent appropriate, shall not be fixed at a rate less than 70 percent except as provided in C, below. If the progress payment percentage of total costs is less than 75 percent, comparable relationship between the progress payment percentage and the above minimum liquidation percentage shall be maintained. Similar principles as to minimum liquidation percentages shall be applied when progress payments are to be made at 90 percent of the costs of direct labor and material, or on a more limited cost base, or at lesser percentages of limited costs.

C. With regard only to items for which final prices have been established under contracts, progress payment liquidation percentages conforming to the standards stated in A, above, but less than the minimum liquidation percentages stated and outlined in B, above (e. g., less than 70 percent when progress payments are based on 75 percent of total costs) may be established by amendment of contracts upon submission of satisfactory information by the contractor showing separately (1) the cost of items that have been delivered, accepted and invoiced, (2) the cost of work not delivered, accepted and invoiced, (3) the estimated costs of completion, and (4) an applicable profit on the items for which final prices have been established that is higher than the amount of profit permitted to be released by application of the progress payment liquidation percentage then specified in the contract.

D. Reference (b) is hereby revised as set forth above. Liquidation percentage rates as described herein, less than those prescribed by reference (b), will not be established initially or by amendment except on the basis of satisfactory cost data and estimates furnished by the contractor. Contracts may be amended to reduce the liquidation rate not more frequently than once in each period of twelve months.

V. *Advance Payments.* Circumstances will occur, especially on contracts with small-business concerns, in which advance payments will be more beneficial to the interests of the Government and more suitable to the situation of the contractor than other methods of contract financing (paragraph 404 of reference (d)). If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hesitation in recommending to higher authority that advance payments be established.

VI. *Acceleration of Payments.* Payments must be made promptly on all contracts when due. It is of continuing importance that there be acceleration of all proper payments earned by contractors, including progress payments. When there are reasons to doubt the prudence of continuing progress payments in cases involving performance difficulties or financial deterioration, decision must be made promptly and with proper regard to the harmful effects of delay on the continued operation of the contractors concerned.

VII. *Small Business—General.* Immediate and continuing attention must be given

at all levels to insure that constructive measures will be taken to facilitate and accelerate necessary contract financing assistance to small suppliers. Every reasonable effort must be made to assist small suppliers in the resolution of their problems relative to the financing of contract performance, as well as to assist them in understanding and complying with the requirements of performance as to payment forms, inspection and cost accounting.

VIII. *Effective Date.* This directive shall be made effective within 30 days after the date of issuance.

C. E. WILSON,
Secretary of Defense.

APPENDIX 3

[DoD Directive 7800.2, 12 March 1954]

DEFENSE CONTRACT FINANCING POLICY

Reference: (a) Memorandum from the Deputy Secretary of Defense, dated February 1, 1951.

I. *Purpose.* The purpose of this directive is to revise reference (a), and to apply its principle to all contract financing.

II. *Cancellation.* Reference (a) is canceled.

III. *Policy.* Guaranteed loans under Section 301 of the Defense Production Act of 1950, as amended, will be used primarily for working capital purposes. Such guarantee authority will not be used for loans for facilities expansion.

It is not the intent of this directive, however, to preclude guarantees in cases in which a relatively small part of the loan might be used for facilities expansion of a minor or incidental nature; provided, that the borrower's financial condition is such that the facilities expansion will not delay or impair repayment of a guaranteed loan which would be granted on a commercial banking basis.

Since advance payments and progress payments should be self-liquidating from contract performance, they also will not be used to finance fixed asset acquisitions for contractor ownership.

These limitations are not intended to apply to contracts under which facilities are being acquired for Government ownership.

C. E. WILSON,
Secretary of Defense.

APPENDIX 4

[DoD Directive 7830.1, May 31, 1956]

DEFENSE CONTRACT FINANCING POLICY—ADVANCE PAYMENTS

References: (a) Department of Defense Directive No. 7800.1, dated 30 October 1953, Subject: Defense Contract Financing Policy; (b) Department of Defense Directive No. 7830.1, dated 7 November 1951, with attachment, Subject: Defense Contract Financing Policy—Advance Payments; (c) Department of Defense Directive No. 7830.3, dated 8 May 1952, Subject: Defense Contract Financing Policy—Advance Payments.

I. *Purpose.* It is the purpose of this directive to revise and combine references (b) and (c), and (1) eliminate the requirement for interest charge on advance payments on contracts for the management and operation of Government-owned plants, (2) increase the interest rate on new interest-bearing advance payment provisions to 5 percent, and (3) conform the records clause requirement for advance payments under Title II of the First War Powers Act to the general records clause requirement under that Act.

II. *Scope.* This directive supplements reference (a). It applies to all advance payments hereafter authorized, whether pursuant to the Armed Services Procurement Act of 1947, as amended, the First War Powers Act, 1941, as amended, or pursuant to any other legislation except Section 602 of the Defense Appropriation Act, 1956 (P. L. 157, 83d Congress, 69 Stat. 314).

III. *Policy.* A. Advance payments should be used sparingly and care should be taken to see that advances outstanding are sufficient for but do not exceed the actual reasonable requirements for the contracts. The amount of the advance payment in any case should be based upon an analysis of the cash flow required under the contract, and as a general rule should not exceed the interim cash needs arising during the reimbursement cycle.

Generally, except for (1) nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, and (2) contracts solely for the management and operation of Government-owned plants, advance payments should not be authorized unless no other means of adequate financing is available to the contractor, and the amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

B. The advance payment agreement should provide for deposit of all payments into special bank accounts and should include suitable covenants to protect the Government's interest. Advance payments under such authorizations should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon the material and other property acquired for performance of the contract.

C. Interest will be charged on all advance payments hereafter authorized, at the rate of 5 percent per annum on the unliquidated balance; provided, however, advance payments may be approved without interest when in connection with nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, or on contracts solely for the management and operation of Government-owned plants, or, in unusual cases when specifically authorized by the Under or Assistant Secretary responsible for the comptroller function. In this connection, contracts for acquisition of facilities at cost, for Government ownership, in combination with or in contemplation of supply contracts or subcontracts, will be treated as ordinary profit contracts requiring interest on advance payments.

Contracts with interest-free advance payments, hereafter authorized, should provide that the contractor will charge interest at the rate of 5 percent per annum on sub-advances or down payments to subcontractors, and that interest charged on such sub-advances or down payments will be credited to the account of the Government. However, interest need not be charged on sub-advances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

D. Except as provided in Part IV, below, the responsibility and authority for making determinations and findings with respect to advance payments, and in each case for approval of contract provisions for advance payments, or for approval of the terms and conditions thereof, shall be in the Under or Assistant Secretary responsible for the comptroller function in each military department. The Government may not be committed, in any manner, directly or indirectly, to make an advance payment without the approval of the Under or Assistant Secretary responsible for the comptroller function (or in appropriate cases, of the persons to whom advance payment approval authority has been delegated in accordance with Part IV), and no procurement involving advance payments may become final until such approval is obtained.

E. If a disagreement arises between the contract financing office and the interested procurement activity in any department as to whether, to what extent, or in what form, financing should be furnished, the matter will be referred immediately to and resolved in the higher echelons of authority responsible respectively for financing and procurement functions, subject to any issue being resolved ultimately by the Secretary of the department concerned.

F. Each department shall submit reports of financing activities at such times and in such form as may be prescribed by the Assistant Secretary of Defense (Comptroller).

IV. *First War Powers Act, as amended.* Pursuant to the First War Powers Act, 1941, as amended, and Executive Order No. 10210 of February 2, 1951, the Department of the Army, the Department of the Navy, and the Department of the Air Force are authorized to make advance payments under contracts heretofore or hereafter made, without regard to other provisions of law relating to contracts, including advance payments under contracts awarded on competitive bids after formal advertising, and to amend such contracts to provide for advance payments.

All contracts and amendments to contracts providing for advance payments made under the authority of the above-cited Act and Executive Order shall—

1. Make reference to the Act and the Executive Order;

2. Include a finding that the national defense is facilitated thereby; and

3. Include the clause for "Examination of Records" required under that Act or the clause set forth in ASPR 7–104.15.

Complete data shall be maintained by each department as to all contracts and amendments to contracts relating to advance payments made pursuant to the above-cited Act and Executive Order.

Pursuant to the above-cited Act and Executive Order, the authority in each case to approve contract provisions for advance payments, or to authorize the terms and conditions thereof, may be delegated within each department to the Under or Assistant Secretary responsible for the comptroller function, with power of redelegation under such Under or Assistant Secretary no further than, to the Comptroller of the Army (and an alternate within his office) in the Department of the Army, to the Assistant Comptroller, Accounting and Finance (and an alternate within his office) in the Department of the Navy, and to the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force (and an alternate responsible to such Deputy for Contract Financing).

V. *Effective Date—Cancellations.* This directive is effective 30 days from the date hereof, and may be applied from the date of issuance. It cancels references (b) and (c), but does not affect existing delegations of authority made pursuant to them.

C. E. WILSON,
Secretary of Defense.

APPENDIX 5

[DoD Directive 7840.1, 22 April 1954]

DEFENSE SUPPLY CONTRACT FINANCING—PROGRESS PAYMENTS BASED ON COSTS

References: (a) Department of Defense Directive No. 7800.1, dated 30 October 1953, Subject: Defense Contract Financing Policy; (b) Department of Defense Directive No. 7840.1, dated 15 February 1954, Subject: De-

fense Supply Contract Financing—Progress Payments Based on Costs.

I. *Purpose.* It is the purpose of this directive to clarify certain questions that have arisen under references (a) and (b), with particular regard to the general order of preference for forms of financing stated in reference (a), the requirement of references (a) and (b) that Government financing be provided only when reasonably necessary, and the provision of reference (b) that progress payments should be only supplementary to private financing, including guaranteed loans.

II. *Cancellation.* Reference (b) is canceled.

III. *Standards for Customary Progress Payments Based on Costs.* It is not and has not been the policy of the Department of Defense that the proper use of progress payments should be stopped or unreasonably curtailed. Progress payments are sometimes necessary and useful to supplement the working funds available to defense contractors of all sizes. It should seldom be necessary for progress payments based on costs to exceed 90 percent of direct labor and material costs, or 75 percent of total costs, of the work done under the undelivered portion of the contract.

Certain types of production contracts involve a long "lead time" or preparatory period, normally approximating six months or more between the beginning of work and the first delivery, and may require contractor's pre-delivery expenditures that will have a material impact on the contractor's working funds. Familiar examples include, among others, contracts for aircraft, engines, complex items of electrical or electronics equipment, heavy handling equipment, production machines and equipment, tanks and other items of heavy ordnance.

Progress payments have been traditional and customary on this class of contracts, on the basis of not more than 75 percent of total costs or 90 percent of direct labor and material costs, of the work done under the undelivered portion of the contract. Higher percentages have been provided in recent years. Such higher percentages, for future procurement, will be regarded as unusual, and not within the category of customary progress payments.

When requested by contractors who are known (from experience or adequate preaward investigation) to be reliable, competent, and capable of satisfactory performance, to have an adequate accounting system and controls, and to be in satisfactory financial condition, provision for progress payments up to but not exceeding the percentages and bases specified above, in the class of contracts described above, is regarded as reasonably necessary within the meaning of reference (a). In such cases it is not necessary to require projections of cash receipts and expenditures or other demonstration of actual reasonable need for progress payments. To this extent, for this class of contracts, the general preference for private financing, including guaranteed loans (reference (a)), does not apply.

When costs other than for direct labor and material are in the base for progress payments, the percentage of the contract price of delivered items to be applied for liquidation of progress payments will be not less than the percentage of costs upon which progress payments are based, e. g., when progress payments are based on 75 percent of all cost, liquidation will be at a rate not less than 75 percent of the contract price of separate items as they are delivered. When progress payments are based on 90 percent (or specified lesser percentage) of the costs of direct labor and material, the rate of liquidation of progress payments will be not less than 90 percent (or the specified lesser percentage) of the percentage of estimated total costs represented by the estimated costs of direct labor and material. Thus, for example, if the base for progress payments is 90 percent of the costs of direct labor and material, and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation will be at a rate not less than 63 percent (90×70) of the contract price of separate items as they are delivered.

This directive is applicable to all contracts of the class described above, whether such contracts are large or small, and to all contractors regardless of the size of the contractor. However, in order to minimize administrative effort and expense, progress payments will be discouraged on relatively small contracts of the stronger and larger contractors, e. g., contracts for less than $1,000,000, unless the circumstances of a group of such contracts, for contemporaneous performance, make such contracts the approximate equivalent of a larger contract that would have a material impact on the contractor's working funds.

IV. *Standards for Unusual Progress Payments Based on Costs.* Progress payments based on costs, other than progress payments of the class and within the limits set forth in part III of this directive, above, will be regarded as unusual, and will require special approval. This is deemed necessary for the purpose of minimizing risks, and in order to establish and maintain the greatest practicable uniformity with regard to such progress payments within and among the military departments. Any contractor seeking provision for progress payments that is "usually", within the meaning of this directive, will be required to demonstrate fully his actual need therefor, with due regard to the preference for private financing, including guaranteed loans (reference (a)). Requests for "unusual" progress payments shall be approved only under exceptional circumstances and must have the specific approval of the head of a procuring activity (ASPR 1–201.4) or of a general or flag officer designated for that purpose.

Such cases must involve a preparatory period requiring contractor's pre-delivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit. Contract provisions for progress payments in this category will be only supplementary to private financing, including guaranteed loans, in amounts necessary for contract performance. The percentage rates and cost bases for progress payments on new procurement in this category will be determined on a minimum basis commensurate with the contractor's production schedule requirements and minimum inventory lead time, with due regard to the contractor's projected cash needs, cash resources and their planned application.

For the time being, all requests involving progress payments at rates exceeding 90 percent of direct labor and material costs or exceeding 75 percent of total costs, if regarded favorably by the head of a procuring activity (ASPR 1–201.4) or by a specially designated general or flag officer within a procuring activity, will be forwarded, with supporting information, for approval of a designated office or person at departmental headquarters of the military department directly concerned. Such office or person may be the contract financing office at departmental headquarters (reference (a)), or such person or persons, located at departmental headquarters and responsible to the Under or Assistant Secretary responsible for the comptroller function, as may be designated for this purpose by such Under or Assistant Secretary. Such requests, before approval, will be coordinated speedily with representatives of the other military departments and of the Assistant Secretary of Defense (Comptroller). When approval is given by the contract financing office, or other designated representative of the Under or Assistant Secretary above-mentioned, such approval will ordinarily extend to future contracts with the same contractor, so that resubmission of future similar requests for unusual progress payments to that contractor need not be required unless so indicated on the initial approval or thereafter required by the approving authority after review of the contractor's current condition and circumstances.

V. *General Considerations.* Progress payments require careful administration to insure against overpayments and losses. In all cases the physical progress of the work should be evaluated periodically to assure that the progress payments are fairly supported by the value of the work actually accomplished on the undelivered portion of the contract in conformity with the contract requirements. Also, the unliquidated progress payments should not be permitted to exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to the partially finished undelivered portion of the contract.

The extent of supervision required, whether for loss prevention or for avoidance of overpayments, should vary inversely with the experience, performance record, reliability, quality of management, and financial strength of contractors, and with the adequacy of their accounting system and controls. Review should be of a kind and degree that will be sufficient, consistent with the circumstances of individual cases, to provide timely knowledge of circumstances that would adversely affect contract performance and the liquidation of progress payments, and timely opportunity for any action that may be appropriate for the protection of the Government. Particular care must be taken to assure that the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or that the contractor has adequate resources to complete the contract if the unpaid balance of the contract price is inadequate to cover costs of completion.

In the process of reviewing individual progress payments already existing or hereafter established, action to reduce or slow down progress payments or to increase liquidation rates (unless justified on other grounds, such as overpayments or unsatisfactory performance) should be consistent with contract provisions, and never taken precipitately or arbitrarily. Any such reduction of progress payments on active contracts (other than normal liquidation pursuant to the contract) should be effected only after notice to and discussion with the contractor, and after full exploration of the contractor's financial condition, existing or available credit arrangements, projected cash requirements, effect of progress payment reduction on the contractor's operations, and generally on the equities of the particular situation. Where contract performance is satisfactory, and there is neither overpayment nor anticipated loss proper progress payments, adequately verified, will be paid promptly when earned and billed in accordance with contract provisions, even though the terms of the particular contract may make the payment discretionary rather than mandatory, and such proper payments will not be held up or denied because of the contractor's lack of need for the payment.

The standards set forth and referred to in this directive are equally applicable to situations where it is contemplated that contracts will provide for progress payments based on progress payments made by a prime contractor to a subcontractor. However, when progress payments have been made by a prime contractor to a subcontractor pursuant to the provisions of the applicable prime contract and subcontract, the progress payment to the prime contractor to reimburse him for such progress payment to the subcontractor may include the full amount of

his progress payment made to the subcontractor when so provided by the prime contract.

Cost reimbursement contracts will not be used as a means or for the purpose of avoiding the standards applicable to progress payments.

Progress payments measured by a percentage of physical completion will not be used as a substitute for progress payments based on costs, in situations where progress payments are ordinarily based on costs.

VI. *Effective Date.* This directive is effective upon issuance. It has equal application to production contracts and to contracts for research and development. It applies to new contracts involving progress payments based on costs, to new supplements or amendments increasing quantities under existing contracts, and to any amendments or supplements providing for progress payments based on costs under any contracts not presently providing for progress payments. Part V, above, is also applicable to existing contracts, whenever consistent therewith. Copies of this directive will be distributed promptly by the military departments to all personnel concerned with the making of contract provisions for progress payments based on costs, or with the administration of such progress payments. It is contemplated that additional directives will deal more comprehensively with progress payments, particularly progress payments based on percentages of physical completion.

C. E. WILSON,
Secretary of Defense.

APPENDIX 6

V-LOAN GUARANTEE AGREEMENT

NOTE: A sample copy of this form has been filed with the Federal Register Division as part of the original document.

The Joint Regulations AR 715–6, NAVEXOS P–1006, AFR 173–133 "Defense Contract Financing Regulations" as prepared by the Contract Finance Committee are hereby approved for publication and implementation.

ROBERT D. KING,
Deputy Assistant Secretary of the Army (Financial Management).
WILLIAM B. FRANKE,
Assistant Secretary of the Navy (Financial Management).
LYLE S. GARLOCK,
Assistant Secretary of the Air Force (Financial Management).

DECEMBER 17, 1956.

[F. R. Doc. 57–964; Filed, Feb. 8, 1957; 8:45 a. m.]

Chapter V—Department of the Army

Subchapter F—Personnel

PART 577—MEDICAL AND DENTAL ATTENDANCE

PERSONS ELIGIBLE TO RECEIVE CARE

Section 577.15 is revised to read as follows:

§ 577.15 *Persons eligible to receive medical care at Army medical treatment facilities*—(a) *General*—(1) *Purpose.* This section establishes the policy governing the authorization for medical and dental care of certain categories of personnel at Army medical treatment facilities and prescribes the extent of treatment authorized thereat.

(2) *Applicability.* This section is applicable to all commands of the Army establishment.

(b) *Definitions.* For the purpose of this section, the following definitions apply:

(1) *Uniformed services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the Coast and Geodetic Survey, and the Commissioned Corps of the Public Health Service.

(2) *Member of a uniformed service.* A person appointed enlisted, inducted, called, ordered, or conscripted in a uniformed service who is serving on active duty or active duty for training.

(3) *Retired member of a uniformed service.* A member or former member of a uniformed service who is entitled to retired, retirement, retainer, or equivalent pay as a result of service in a uniformed service, other than a member or former member entitled to retired or retirement pay under Title 10, United States Code, sections 1331–1337 (formerly Title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948), who has served less than 8 years on full-time duty in the active military service other than active duty for training.

(4) *Elective medical and surgical treatment.* Medical or surgical care that is desired or requested by the patient which, in the opinion of the cognizant medical authority, is not medically indicated, for example, surgery solely for cosmetic purposes.

(5) *Dental care.* As used in this section, medical care will include dental care unless otherwise specified.

(6) *Domiciliary care.* Care which is normally given in a nursing home, convalescent home, or similar institution to a patient who requires personal care rather than active and definitive treatment in a hospital for an acute medical or surgical condition. It includes but is not limited to nursing care required as a result of old age or chronic disease.

(c) *Authorization.* Authorization for medical care is under the jurisdiction of the commanding officer of the medical or separate dental treatment facility concerned. Persons requesting treatment will be required to furnish positive identification satisfactory to the commanding officer concerning their eligibility for medical care.

(d) *General restrictions*—(1) *General.* Medical care and related adjuncts thereto furnished nonmilitary personnel will not exceed the care furnished members of a uniformed service or interfere with the primary mission to furnish care to members of a uniformed service.

(2) *Availability of facilities.* The furnishing of medical care to other than members of a uniformed service serving on active duty or active duty for training and retired members placed on the temporary disability retired list who require hospitalization in connection with the conduct of periodic physical examinations will be subject to the availability of space and facilities, and the capabilities of the professional staff. Civilian employees of the Army, Navy, Air Force, and Office of Secretary of Defense (not beneficiaries of the Bureau of Employees' Compensation), and persons who contribute to accomplishment of oversea commander's mission (paragraph (x) (1) of this section) will be furnished medical care subject to the availability of facilities only in the absence of adequate civilian medical facilities as determined by the appropriate major commander. Nonmilitary personnel should not undertake travel to an Army medical treatment facility without first ascertaining whether and when accommodations will be available. When personnel are furnished medical care subject to the availability of facilities and subsequent to admission it is determined that the care required is beyond the normal capabilities of the facility, transfer to other uniformed services or Federal medical treatment facilities will be accomplished. When the required treatment can be readily afforded by the admitting facility by utilizing resources, monetary or otherwise, available to the commanding officer, treatment may be provided at the facility.

(3) *Dental care.* Dental care for personnel listed in paragraphs (k), (l) (1) and (2), (m), (r) and (s) (1) (vii) of this section will be limited to emergency dental treatment for the relief of pain or acute septic conditions, or for dental conditions associated with serious illness requiring hospitalization. Such dental care will not include the provision of prosthetic dental appliances or permanent restorations.

(4) *Domiciliary care.* Admission of persons requiring merely domiciliary care is not authorized.

(5) *Elective medical and surgical treatment.* Elective medical and surgical treatment is not authorized except for personnel listed in paragraph (e) of this section.

(6) *Spectacles for nonmilitary personnel and nationals of foreign governments except Canadian personnel*—(i) *Outside the continental United States.* Spectacles may be furnished to those nonmilitary personnel listed in paragraphs (l) (1) and (2), (v), and (w) (2) of this section when, in the opinion of the commanding officer of the medical treatment facility concerned, they are required to enable the patient to perform adequately his assigned duties, and when return to the continental United States for medical reasons would otherwise result, provided spectacles are not available through commercial sources. The first condition cited above is not applicable to dependents of personnel who are included in the above referenced paragraphs.

(ii) *Inside the continental United States.* Spectacles may be furnished to those nationals of foreign governments listed in paragraphs (s) (1) (i) through (vi) of this section when, in the opinion of the commanding officer of the medical treatment facility concerned, they are required to enable the patient to perform adequately his assigned duties, and when return to their home country for medical reasons would otherwise result, provided spectacles are not available through commercial sources. The first condition

cited above is not applicable to dependents of personnel who are included in paragraph (s) (1) (i) through (vi) of this section.

(e) *Members of a uniformed service serving on active duty or active duty for training pursuant to a call or order that does not specify a period of 30 days or less*—(1) *Members of the Army, Navy, Air Force, and Marine Corps.* Male or female members, including officers, warrant officers, enlisted personnel, prisoners, aviation cadets, professors and cadets of the United States Military Academy, midshipmen of the United States Naval Academy, and cadets of the United States Air Force Academy.

(2) *Members of the Coast Guard, and the Commissioned Corps of the Coast and Geodetic Survey and the Commissioned Corps of the Public Health Service.* Officers, commissioned warant officers, cadets and enlisted personel of the Coast Guard, commissioned officers of the Coast and Geodetic Survey, and commissioned officers of the Public Health Service.

(f) *Reserve components and National Guard on active duty or training pursuant to a call or order that specifies a period of 30 days or less*—(1) *Army Reserve and Army National Guard.* For conditions under which members of the Army Reserve and officers, warrant officers, and enlisted men of the federally recognized Army National Guard of the several States, Territories, and the District of Columbia, and the Army National Guard of the United States are provided medical care, the provisions of paragraphs 11 and 12, AR 40–101 (Administrative regulations pertaining to medical care), respectively, apply.

(2) *Navy and Marine Corps.* Navy and Marine Corps reservists provided that any personnel in this category will be transferred to a Naval medical treatment facility prior to termination of such duty if there is a possibility that continuation of hospitalization may be necessary subsequent to termination of such duty and if the condition of the patient permits transfer.

(3) *Air Force Reserve and Air Force National Guard.* The provisions of paragraphs 11 and 12, AR 40–101, respectively, concerning conditions under which members of the Army Reserve and Army National Guard are provided medical care are applicable to members of the Air Force Reserve, Air Force National Guard, and Air Force National Guard of the United States, except that such care is not furnished at the expense of Army Medical Service funds.

(4) *Personal injury in line of duty.* Prosthetic devices, prosthetic dental appliances, hearing aids, spectacles, orthopedic footwear, and routine dental treatment will be furnished the personnel listed in subparagraphs (1), (2), and (3) of this paragraph, for conditions which are disabling and the result of personal injury suffered or disease contracted in line of duty. Dental care for other conditions will be limited to emergency treatment.

(g) *Reserve Officers' Training Corps.* Prosthetic devices, prosthetic dental appliances, and routine dental treatment will be furnished members of the Army, Naval, and Air Force Reserve Officers' Training Corps only for conditions which are disabling and the result of personal injury suffered or disease contracted in line of duty. Dental care for other conditions will be limited to emergency treatment.

(h) *Retired members of a uniformed service retired for other than physical disability.* All retired members of a uniformed service retired for other than physical disability.

(i) *Retired members of a uniformed service retired for physical disability*—(1) *Temporary disability retired list (periodic physical examinations).* Retired members placed on the temporary disability retired list who require hospitalization in connection with the conduct of periodic physical examinations.

(2) *Temporary or permanent retirement (less than 20 years of active duty).* Retired members temporarily or permanently retired for physical disability or receiving disability retirement pay, with less than 20 years of active duty, except, hospitalization for the following chronic conditions: chronic arthritis, malignancy, psychiatric or neuropsychiatric disorder, neurological disabilities, poliomyelitis with disability residuals and degenerative disease of the nervous system, severe injuries to the nervous system including quadriplegia, hemiplegia, and paraplegia, tuberculosis, blindness and deafness requiring definitive rehabilitation, and major amputees. Hospitalization for the above conditions is the responsibility of the Administrator of Veterans' Affairs.

(3) *Temporary or permanent retirement (20 years or more of active duty).* Retired members temporarily or permanently retired for physical disability or receiving disability retirement pay, with 20 years or more of active duty, except those with blindness, neuropsychiatric or psychiatric disorders, and tuberculosis whose hospitalization is the responsibility of the Administrator of Veterans' Affairs.

(4) *Treatment for other chronic conditions and outpatient care.* All retired members of a uniformed service retired for disability are authorized hospitalization for treatment of chronic conditions, other than those listed in subparagraph (2) and (3) of this paragraph, and for outpatient care regardless of the nature of the illness for which required.

(5) *Emergency Officers' Retired List.* Members on the Emergency Officers' Retired List who are entitled to retired pay for physical disability.

(j) *Selective Service.* Emergency medical care including hospitalization for registrants who suffer illness or injury while acting under orders issued by or under the authority of the Director of Selective Service.

(k) *Public Health Service.* The following beneficiaries of the Public Health Service upon representation of written authorization as indicated in subparagraphs (1), (2), (3) and (4) of this paragraph. If a beneficiary is furnished medical care in an emergency without the required written authorization, it is the responsibility of the commanding officer of the Army medical treatment facility to obtain proper written authorization from the medical officer in charge of the nearest Public Health Service medical care facility or in the case of Indians from the medical officer in charge of the Indian Health Area Office or the Alaska Native Health Service, Public Health Service, Juneau, Alaska, as soon as possible.

(1) *Coast and Geodetic Survey.* Ships' officers and members of crews of vessels of the Coast and Geodetic Survey will be provided medical care as follows:

(i) *Authorization for inpatient care in continental United States, its Territories, possessions, and the Commonwealth of Puerto Rico.* Authorization for beneficiaries will be prepared on Form PHS 894 (HD), and signed by the officer in charge of a Public Health Service medical care facility. If the emergency is such that it is not possible to procure this authorization on Form PHS 894 (HD), authorization may be by letter signed by an officer of the same service as the patient; or, if no officer is available, by letter signed by the patient himself. Such authorizing letter, whether signed by an officer or by the patient, will show the patient's full name, organization, serial number, grade, and diagnosis (if known), and will state that he is on active duty. It will also state the reason for medical care by Army medical treatment facilities (instead of Public Health Service facilities).

(ii) *Authorization for emergency outpatient care in continental United States, its Territories, possessions, and the Commonwealth of Puerto Rico.* Beneficiaries may be furnished outpatient care only in an emergency when immediate care is necessary. Authorization for such emergency outpatient care will be as indicated in that portion of subdivision (i) of this subparagraph which pertains to emergencies.

(iii) *Authorization for medical care (inpatient and outpatient) outside the United States, its Territories, possessions, and the Commonwealth of Puerto Rico.* In such oversea areas, beneficiaries will be furnished medical care on written authorization prepared and signed as indicated in subdivision (i) of this subparagraph.

(2) *American seamen.* American seamen in the continental United States, its Territories, possessions, and the Commonwealth of Puerto Rico to include seamen aboard privately owned and operated vessels of United States registry, and also vessels owned and operated by the United States Government; active enrollees in the United States Maritime Service; and members of the Merchant Marine Cadet Corps will be provided medical care as follows:

(i) *Authorization for inpatient care in continental United States, its Territories, possessions, and the Commonwealth of Puerto Rico.* Authorization for beneficiaries will be prepared on Form PHS 894 (HD) and signed by the officer in charge of a Public Health Service medical care facility. When, in case of genuine emergency, it is necessary to admit a patient prior to obtaining written authorization, the commanding of-

ficer of the Army medical treatment facility will telephone or telegraph the nearest Public Health Service Station as soon as possible, giving all available information respecting the patient's status as a Public Health Service beneficiary, in order that the case may be investigated with a view to issuance of the required Form PHS 894 (HD); or with regard to Maritime Service enrollees, if more practicable, obtain written authorization from the responsible officer of the Maritime Service Station, Merchant Marine Cadet Corps school, or State Maritime Academy.

(ii) *Authorization for emergency outpatient care in continental United States, its Territories, possessions, and the Commonwealth of Puerto Rico.* Beneficiaries may be furnished outpatient care only in emergency when immediate treatment is necessary. The commanding officer of the Army medical treatment facility will take the action indicated in subdivision (i) of this subparagraph, with a view to procuring authorization.

(iii) *Authorization for medical care (inpatient and outpatient) outside the United States, its Territories, possessions, and the Commonwealth of Puerto Rico.* In such oversea areas, the personnel listed in the opening portion of this subparagraph are not entitled to treatment at the expense of Public Health Service funds.

(3) *Public Health Service civilian employees in the field service.* Public Health Service civilian employees in the field service when injured or taken sick in line of duty (except when entitled to treatment at the expense of the Bureau of Employees' Compensation).

(i) *Authorization for inpatient and emergency outpatient care in continental United States, its Territories, possessions, and the Commonwealth of Puerto Rico.* Authorization for medical care will be as indicated in subparagraph (2) (i) and (ii) of this paragraph.

(ii) *Authorization for medical care (inpatient and outpatient) outside the United States, its Territories, possessions, and the Commonwealth of Puerto Rico.* Any necessary medical care may be furnished at the expense of Public Health Service funds on written authorization of the employee's superior officer. The authorization will show the patient's full name, organization, grade, and diagnosis (if known), and will give other identifying data (such as "civilian employee, field service, PHS"). It will also state that the employee is on active duty.

(4) *Enrolled Indians (or members of Indian tribes) in the continental United States, and Indians, Eskimos, and Aleuts in Alaska*—(i) *Enrolled Indians (or members of Indian tribes) in the continental United States.* A letter of authorization for medical care will be prepared and signed by the medical officer in charge of an Indian Health Area Office. When, in case of genuine emergency, it is necessary to admit a patient prior to obtaining written authorization, the commanding officer of the Army medical treatment facility will telephone or telegraph the nearest Indian Health Area Office as soon as possible, giving all available information respecting the patient's status as a Public Health Service beneficiary, in order that the case may be investigated with a view to issuance of the required letter of authorization.

(ii) *Indians, Eskimos, and Aleuts in Alaska.* Authorization for medical care will be as indicated in subdivision (i) of this subparagraph except that the authorization will be signed by the Alaska Native Health Service, Public Health Service, Juneau, Alaska.

(5) *Dental care.* In addition to the dental care provided under the conditions outlined in paragraph (d) (3) of this section, in overseas areas (other than United States possessions and the Commonwealth of Puerto Rico) such complete dental service is authorized as the Army dental officer considers necessary pending the time of the patient's return to the continental United States, to a United States possession, or to the Commonwealth of Puerto Rico.

(l) *Foreign service personnel and their dependents.* The following officers and employees of the State Department, Agriculture Department, International Cooperation Administration and the United States Information Agency (hereinafter referred to as foreign service personnel), and their dependents upon presentation of prior written authorization as indicated in subparagraphs (1) (i), (2) (i), and (3) of this paragraph. If medical care is furnished in an emergency without the required written authorization, it is the responsibility of the commanding officer of the Army medical treatment facility concerned to obtain proper written authorization as soon as possible from the appropriate individual or officer as indicated in subparagraphs (1) (i), (2) (i), and (3) of this paragraph. The term "dependents of foreign service personnel" will be construed to mean those individuals included in the definition of the term "dependent" appearing in §§ 577.60 to 577.70, in addition, a mother, sister, or daughter of a male officer or employee, regardless of age, or dependency, who acts as the official hostess for an officer or employee who has no wife residing with him at the post.

(1) *Foreign service personnel and their dependents who are beneficiaries of the State Department, Agriculture Department, International Cooperation Administration, or the United States Information Agency outside the continental United States.* Foreign service personnel and their dependents, who are beneficiaries of the above agencies may be furnished the services covered in subdivisions (i) and (ii) of this subparagraph under the provisions of section 941 (a) and (b), respectively, of the Foreign Service Act of 1946, as amended. Foreign service personnel and their dependents who are beneficiaries of the above agencies may be furnished the services covered in subdivision (iii) of this subparagraph under the provisions of section 943, Foreign Service Act of 1946, as amended.

(i) *Inpatient care.* Authorization for foreign service personnel will be prepared by the individual's superior officer, or, if there is no superior officer, by the individual himself. The authorization will show the individual's full name, the diagnosis, if known, and will state that the individual is a citizen of the United States on duty abroad in the foreign service employment of the State Department, Agriculture Department, International Cooperation Administration, or the United States Information Agency, naming the type of service and the place of duty (such as "clerk, State Department, Tokyo"). In the case of dependents, authorization will be prepared by the immediate superior officer of the dependent's principal, or, if there is no immediate superior officer, by the principal himself. The authorization will show the dependent's full name, the diagnosis, if known, and will state that the principal is residing abroad with his or her principal. It will give also the full name and relationship of the dependent's principal, with the statement that the principal is a citizen of the United States on duty abroad in the foreign service employment of the State Department, Agriculture Department, International Cooperation Administration, or the United States Information Agency, giving the place and type of employment. In either case, the authorization for inpatient care will also state that the individual is entitled to inpatient care at the expense of the State Department, Agriculture Department, International Cooperation Administration, or the United States Information Agency under the provisions of section 941, Foreign Service Act of 1946.

(ii) *Outpatient treatment.* Outpatient treatment at the expense of the above agencies is authorized only when treatment is furnished for a condition which results in hospitalization or treatment required for post-hospitalization followup, in which case report will be made to the Surgeon General on DD Form 7A (Report of Treatment Furnished Pay Patient; Outpatient Treatment Furnished (Part B)). All other outpatient treatment furnished will be at the expense of the individual patient and collection will be made locally from the individual.

(iii) *Physical examination and immunizations.* Physical examinations including periodic physical examinations (usually biennial) and immunizations necessary in connection with such examinations may be furnished upon presentation of authorization completed as indicated in subdivision (i) of this subparagraph. In addition, the authorization will include the nature of the service desired, the reason therefor and contain the statement that the individual is entitled to these services at the expense of one of the above agencies. Copy in triplicate of the proper physical examination form will be inclosed with the authorization showing in detail thereon the exact extent of the physical examination required (i. e., all procedures in connection therewith). When immunizations are requested in addition to physical examinations, the type of each immunization will be stated specifically.

(iv) *Adjuncts.* Prosthetic devices and hearing aids will not be furnished.

(2) *Foreign service personnel and their dependents (not beneficiaries of the State Department, Agriculture Department, International Cooperation*

Administration, or the United States Information Agency) outside the continental United States. Foreign service personnel (not beneficiaries of the above agencies) who are citizens of the United States on duty abroad and their dependents when domiciled abroad with their principals.

(i) *Inpatient care.* Authorization for the foreign service personnel listed in the opening portion of this subparagraph will be prepared as indicated in subparagraph (1) (i) of this paragraph, except that it will state that medical care will be at the expense of the individual patient.

(ii) *Outpatient treatment.* All out patient treatment will be at the expense of the individual patient and collection will be made locally from the individual.

(3) *Foreign service personnel and their dependents who are beneficiaries of the State Department, Agriculture Department, International Cooperation Administration, and the United States Information Agency inside the continental United States.* Foreign service personnel and their dependents who are beneficiaries of the above agencies may be furnished the services outlined in subdivisions (i), (ii) and (iii) of this subparagraph, respectively, under the provisions of section 943 of the Foreign Service Act of 1946, as amended.

(i) *Preemployment physical examinations and immunizations.* Preemployment physical examinations and immunizations of applicants for appointment as officers or employees in the foreign service of the State Department, Agriculture Department, International Cooperation Administration, or the United States Information Agency, together with immunizations necessary in connection with such examinations.

(ii) *Periodic physical examinations.* Periodic physical examinations (usually biennial) of foreign service personnel of the above agencies who are on duty or leave in the continental United States.

(iii) *Physical examinations and immunizations.* Physical examinations and immunizations necessary in connection with such examinations and immunizations in addition to physical examinations for dependents of foreign service personnel of the above agencies.

Authorization for the service covered in subdivisions (i), (ii), and (iii) of this subparagraph will be prepared by the Department of State, Department of Agriculture, International Cooperation Administration, or the United States Information Agency. The authorization will give the full name of the examinee, stating the nature of the service desired and the reason therefor. Copy in triplicate of the proper physical examination form will be inclosed with the authorization, showing in detail thereon the exact extent of the physical examination required (i. e., all procedures in connection therewith). When immunizations are requested (in addition to physical examinations), the type of each immunization will be stated specifically. For instructions concerning the disposition of physical examination forms and the authorizations for physical examinations and immunizations, the provisions of subparagraph (1) (iii) of this paragraph will apply.

(4) *Evacuation from Army medical treatment facilities overseas and extent of medical care in the continental United States.* Those foreign service personnel and their dependents listed in subparagraphs (1) and (2) of this paragraph who are hospitalized in Army medical treatment facilities overseas, whose condition would require retention in such hospital for a prolonged period of time, may be evacuated to the continental United States through Army medical evacuation channels as soon as transfer is possible without detriment to the patient. No dependent will be evacuated to the continental United States who is not a citizen of the United States. Prior to evacuation, the medical treatment facility commander concerned in the case of foreign service personnel will obtain the concurrence of the nearest State Department, Agriculture Department, International Cooperation Administration, or the United States Information Agency office or installation (whichever is applicable). In the event the nearest office or installation referred to above is not the office of employment of the foreign service persons, the nearest office or installation will obtain the necessary concurrence from the foreign service person's superior.

(m) *United States Soldiers' Home.* Members of the United States Soldiers' Home within the continental United States.

(n) *Applicants for enlistment and registrants.* Applicants for enlistment and registrants while under military control whose physical fitness for military service cannot be determined without hospital study for a period not to exceed three days. In addition, applicants for enlistment who suffer acute illnesses and injuries while awaiting or undergoing enlistment processing at recruiting main stations or at Armed Forces Examining Stations may be furnished emergency medical care including hospitalization.

(o) *Prisoners*—(1) *Prisoners of war and internees.* Prisoners of war, persons interned by the Army, and other persons in military custody or confinement. Prosthetic devices, prosthetic dental appliances, and spectacles will be furnished prisoners of war as required by the Geneva Convention of 1929.

(2) *Prisoners (punitive discharge executed) hospitalized beyond expiration date of sentence.* Prisoners of Army and Air Force (punitive discharge executed) may be hospitalized beyond expiration date of sentence until disposition can be made to some other medical facility.

(p) *Female personnel of the Armed Forces (separated)*—(1) *General.* Female personnel of the Armed Forces separated under honorable conditions because of pregnancy; or who, although separated under honorable conditions for reasons other than pregnancy, are shown by the record of terminal physical examination to have been pregnant at the time of separation.

(2) *Application.* Female personnel of the Army who desire maternity care will request it in writing at the time of their separation. Requests will be addressed through the commanding officer of the installation where separation is accomplished to the surgeon of the Army area in which they plan to live following separation. Requests will include forwarding address and a copy of separation orders. The indorsement by the commanding officer of the installation, where separation is accomplished, will indicate eligibility for maternity care and any pertinent data as to status of pregnancy.

(3) *Extent.* The extent of maternity care for female personnel referred to in subparagraph (1) of this paragraph includes prenatal care, hospitalization, confinement, and postnatal care either in a hospital or as an outpatient for 6 weeks following delivery.

(4) *Newborn infants.* No charge is made for newborn infant patients while the mother is a patient in the medical treatment facility. In those cases where the mother is discharged from the medical treatment facility and it is necessary for the infant to remain as a patient or where the infant is readmitted as an individual patient, charges will be made at the rates prescribed for the mother in each case. If newborn infant patients require medical care subsequent to the postnatal 6 weeks' period, disposition will be made to private, welfare, State, or Federal agencies.

(q) *Individuals requiring medical evaluation.* Individuals who require medical evaluation in connection with consideration of their case by the Army Board for Correction of Military Records.

(r) *Season (not beneficiaries of the Bureau of Employees' Compensation).* Civilian seamen in the service of vessels operated by the Department of the Army or the Military Sea Transportation Service listed in subparagraphs (1) and (2) of this paragraph, are still in the service of a vessel, although not on board and not engaged in their duties, as long as they are under the power and jurisdiction of competent Department of the Army or Military Sea Transportation Service authorities. Cases of traumatic injury or occupational disease incurred in the course of employment should be treated as Bureau of Employees' Compensation beneficiaries.

(1) *Civilian seamen in the service of vessels operated by the Department of the Army.* For a reasonable time. Those entitled to care by the Public Health Service will be furnished medical care only when facilities of that service are not available except in emergencies. Authorization for such care will be granted upon presentation of a certificate from master or other appropriate administrative authority which may be dispensed with only in emergencies.

(2) *Civilian seamen in the service of vessels operated by the Military Sea Transportation Service.* For a reasonable time. Those entitled to care by the Public Health Service will be furnished medical care only when facilities of that service or Naval facilities are not available except in emergencies. Authorization for such care will be granted upon presentation by the seaman concerned of a duly executed Bureau of Employees' Compensation Form CA-16 (Request for Treatment of Injury Under the United

States Employees' Compensation Act). In cases where immediate treatment is required and the employee concerned does not have the required Form CA–16, the nearest Military Sea Transportation Service command will be requested to submit a duly executed Form CA–16.

(3) *American seamen.* American seamen to include both officers and members of the crew outside the United States, its Territories, possessions, and the Commonwealth of Puerto Rico. This category includes seamen aboard ships of United States Registry such as those aboard Department of Defense time-chartered vessels of commercial operators; those aboard time-chartered vessels other than time-chartered vessels referred to above in emergency to save life or prevent undue suffering; and those on privately owned and operated vessels. A seaman, whose condition would require retention in an Army medical treatment facility for a prolonged period of time may be evacuated through Army medical evacuation channels as soon as transfer without detriment to the patient is possible, when lack of transportation facilities prevents evacuation through the local ship's agent. No seamen in the service of a vessel of foreign registry will be evacuated to the continental United States.

(s) *Nationals of foreign governments, excluding specific categories of Canadian personnel listed in paragraph (t) of this section.* (1) Nationals of foreign governments within the continental United States to include the following:

(i) Foreign military personnel in the attaché system carried on the current "Diplomatic List" (Blue), published by the State Department.

(ii) Foreign military personnel assigned or attached to United States military units for duty or training; foreign military personnel on foreign government military or supply missions accredited to and recognized by one of the military departments.

(iii) Foreign military personnel on duty in the United States at the invitation of the Secretary of Defense or one of the military departments.

(iv) Foreign military personnel accredited to joint United States defense boards or commissions, or assigned to full-time duty with the North Atlantic Treaty Organization when stationed in the United States.

(v) Military Assistance Program (MAP) trainees assigned or attached to United States military units within the continental United States for training.

(vi) Civilian Mutual Assistance Program (MAP) trainees assigned or attached to United States military units within the continental United States for training.

(vii) Dependents of personnel listed above when they are residing with their principals; except dependents of civilian MAP trainees.

(viii) Foreign personnel covered in agreements entered into by the Secretary of Defense or one of the military departments to include but not limited to United Nations Force personnel of foreign governments who provide military assistance to the United Nations effort in Korea.

(ix) Other foreign personnel under exceptional circumstances.

(2) The following policies will govern the furnishing of medical care to nationals of foreign governments (hereinafter referred to as foreign personnel):

(i) Inpatient care will be limited to cases which, in the judgment of the commanding officer of the medical treatment facility concerned will be benefited by hospitalization for a reasonable time but not in excess of 90 days. Those patients requiring merely domiciliary care or suffering from chronic conditions (e. g., tuberculosis, mental diseases, degenerative neurological diseases), will be admitted only in case of extreme necessity, where such admissions will save life or prevent undue suffering.

(ii) MAP trainees who have been selected by their country for training in the United States are presumed to be in good physical condition and free from communicable diseases as a prerequisite to selection. If upon arrival in the United States, it is discovered that the trainee cannot qualify for training by reason of physical and/or mental disability, and will require more than nominal medical treatment before entering training, the trainee will be returned to his country immediately or as soon thereafter as his condition permits travel. When the trainee is disabled after starting his training, and, in the opinion of the commanding officer of the medical treatment facility concerned in consultation with the commanding officer of the training facility concerned, such disability will prevent continuation of the training for a period in excess of 90 days, the trainee will be returned to his home country as soon as his condition permits travel.

(iii) The extent of medical care to be furnished foreign personnel covered in agreements entered into by the Secretary of Defense or one of the military departments will be in accordance with this section and that authorized in the specific agreement. Any question concerning extent of medical care authorized concerning eligibility of any foreign personnel for medical care under specific agreement with another government will be refered to The Surgeon General, Department of the Army, Washington 25, D. C.

(iv) The transfer of foreign personnel between oversea commands and the continental United States solely for the purpose of providing medical care in Army medical treatment facilities is not authorized, except under unusual circumstances as determined by the Secretary of the Army.

(3) Oversea commanders will determine those categories of foreign personnel who may be authorized medical care outside the continental United States. Medical care will be extended only when adequate facilities are available and when medical care cannot be obtained by foreign personnel from medical units of their own country. Type and method of reimbursement will be effected in the same manner as prescribed for the continental United States.

(t) *Canadian personnel.* Canadian military personnel who are assigned to duty within the continental United States, or on an authorized pass or leave of absence from such duty station in the continental United States, and who fall within the categories of personnel outlined in paragraph (s) (1) (i) through (v) of this section, may receive medical care. Medical care is also authorized for their dependents who are living with their principals in the continental United States during the period of such assignment. The extent of medical care furnished at Army medical treatment facilities to these Canadian military personnel and their dependents will be comparable in all respects to that which is authorized for members of uniformed service and their dependents. Prompt payment of subsistence and dependent care charges is the personal responsibility of the Canadian military member concerned.

(1) The provisions of paragraph (s) (2) (ii) of this section apply to Canadian military personnel referred to in this paragraph.

(2) In addition, the provisions of paragraph (s) (3) of this section apply in oversea areas to Canadian military personnel and their dependents referred to in this paragraph.

(u) *Red Cross and other officially recognized welfare workers and their dependents, and certain civilian students—*(1) *Red Cross and other officially recognized welfare workers.* Red Cross and other officially recognized welfare workers on duty with a uniformed service inside and outside the continental United States.

(2) *Dependents of Red Cross and other officially recognized welfare workers.* Dependents of such persons outside the continental United States if actually residing with the principal.

(3) *Civilian students.* Student nurses, student dietitians, and student occupational therapists under the same conditions and on the same basis as medical care is provided Red Cross personnel.

(v) *Operations analysts, scientific consultants, and technical observers.* Operations analysts, scientific consultants, and technical observers officially accredited as such by the Department of the Army when accompanying the Army in the field outside the continental United States.

(w) *Civilian employees—*(1) *Civilian employees inside and outside the continental United States (those authorized health services under Public Law 658, 79th Congress, 1946).* The physical examinations referred to below will normally be furnished on an outpatient basis.

(i) *Civilian employees of the Army.* Civilian employees of the Army including civilian seamen in the service of vessels operated by the Department of the Army, directly employed by the Federal Government and paid from appropriated or industrial funds are authorized to receive treatment of on-the-job illness, injury, and dental conditions requiring emergency attention, and preemployment and other physical examinations without charge under the Occupational Health Service of the Army.

(ii) *Civilian employees of the Navy, Air Force, and Marines, and other Federal departments and agencies.* Civilian employees of the Navy, Air Force, and Marines, and other Federal Departments and agencies paid from appropriated funds are authorized to receive those referred to in subdivision (i) of this subparagraph under the Occupational Health Service of the Army. No charge will be made for outpatient services furnished civilian employees of the Marines, Navy, and Air Force. Charges for such outpatient services furnished civilian employees of other Federal departments and agencies will be at the prescribed outpatient rate.

(2) *Civilian employees of the Army, Navy, Air Force, and Office of Secretary of Defense (not beneficiaries of the Bureau of Employees' Compensation).* Civilian employees of the Army, Navy, Air Force, and Office of Secretary of Defense paid from either appropriated or nonappropriated funds, and their dependents (including librarians and service club personnel) outside the continental United States and at remote military installations in the continental United States. Charges for inpatient care will be at the reciprocal rate for the applicable fiscal year, except in those oversea areas and remote areas within the continental United States where the Secretary of the Army has authorized the special interim per diem-rate.

(3) *Civilian employees of cost-plus-a-fixed-fee contractors of the Department of the Army.* Medical care may be furnished only outside the continental United States.

(4) *Civilian employees of all Federal agencies.* Physical examinations in connection with disability retirement may be furnished civilian employees of all Federal agencies without charge when such examinations are requested by authorized representatives of the United States Civil Service Commission in the administration of the Civil Service Retirement Act, except that when hospitalization is necessary to the proper conduct of those examinations subsistence charges will be collected locally from the individual concerned.

(x) *Persons who contribute to accomplishment of oversea commander's mission—(1) General.* Persons who contribute to the accomplishment of the oversea commander's mission and for whom medical care is deemed essential by the oversea commander concerned in the accomplishment of his mission. The reciprocal rate or the outpatient rate, whichever is applicable, will apply except as indicated in subparagraph (2) of this paragraph.

(2) *Civilian religious leaders or religious groups and others.* Civilian religious leaders or religious groups, celebrities and entertainers, athletic clinic instructors, and representatives of the USO, other social agencies and educational institutions, and persons in similar status providing direct service to the United States Forces, who have obtained official invitational orders from the Office, Secretary of Defense, or from one of the military dependents, to visit oversea military commands may be furnished emergency hospitalization and medical treatment without charge, except that charges for subsistence will be collected locally from the individual when hospitalized.

(y) *Designee of the Secretary of the Army.* Designees of the Secretary of the Army, when furnished medical care in Army medical treatment facilities, will be charged the reciprocal rate or the outpatient rate, whichever is applicable, unless specifically otherwise authorized by the Secretary of the Army. In the event the Secretary of the Army authorizes the furnishing of hospitalization with no reimbursement therefor, a charge for subsistence will be made to the individual. In unusual or extraordinary circumstances the Secretary of the Army may waive subsistence charges.

(z) *Indigent and nonindigent civilians.* Indigent and nonindigent civilians in extreme necessity to save life or prevent undue suffering.

[AR 40–108, 31 December 1956] (R. S. 161; 5 U. S. C. 22)

[SEAL] HERBERT M. JONES,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 57–993; Filed, Feb. 8, 1957; 8:45 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 916]

[Docket No. AO–247–A4]

MILK IN UPSTATE MICHIGAN MARKETING AREA

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C., 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Park Place Hotel, Traverse City, Michigan, beginning at 10 a. m., local time, February 26, 1957. The public hearing is for the purpose of receiving evidence with respect to emergency and other economic conditions which relate to the proposed amendments hereinafter set forth, or appropriate modification thereof, to the tentative marketing agreement as heretofore approved by the Secretary of Agriculture and to the order, as amended, regulating the handling of milk in the Upstate Michigan marketing area (7 CFR 916.0 et seq.). The amendments proposed have not received the approval of the Secretary of Agriculture.

The proposals relating to the enlargement of the Upstate Michigan marketing area raise the issue as to whether the provisions of the present order would tend to effectuate the declared policy of the Act if applied to the marketing area as proposed to be extended and, if not, what modifications of the provisions of the order, as amended, should be made to effectuate the declared policy of the Act.

Proposed by Michigan Milk Producers' Association:

1. In § 916.8 delete the words "fluid milk plant" and substitute the words "pool plant".

2. Add the following as § 916.16:

§ 916.16 *Pool plant.* A pool plant is a fluid milk plant which utilizes 50 percent or more of its producer receipts in Class I sales on routes inside or outside of the marketing area or supplies a substantial volume of its receipts to such a plant.

3. Review seasonal pricing of Class I and also Class II and III prices.

4. Add the following as § 916.63 (This amendment also proposed by the Borden Company):

§ 916.63 *Handler operating a plant which is not a pool plant.* Each handler who operates a plant which is not a pool plant during the month shall pay to the market administrator for the producer equalization fund, on or before the 25th day after the end of such month any amount resulting from the following computation:

(a) Compute an amount equal to the net pool obligation which would be computed pursuant to § 916.60 for milk received from dairy farmers at such plant for such month if such handler operated pool plant;

(b) Deduct the gross payments, inclusive of any premiums but exclusive of deductions, made by the handler to dairy farmers for milk received at such plant during such month;

(c) Divide the remainder, if any, by the number of hundredweights of milk received from dairy farmers and utilized for Class I purposes: *Provided*, That in no event shall the resulting amount per hundredweight exceed the difference between the Class I and Class II prices; and

(d) Multiply the amount per hundredweight determined pursuant to paragraph (c) of this section by the number of hundredweights of Class I milk disposed of from such plant in the marketing area.

5. Substitute the following for § 916.60:

§ 916.60 *Value of producer milk.* The value of producer milk received during the month by each handler shall be a sum of money computed by the Market Administrator by multiplying by the applicable class price, adjusted pursuant to § 916.53, the total combined hundredweight of skim milk and butterfat received from producers allocated to each class pursuant to § 916.46 and § 916.47, adding together the resulting amounts, and if such handler has a utilization greater than has been accounted for as received from all sources, add an amount computed by multiplying any such excess utilization classified pursuant to § 916.46 and § 916.47 by the applicable class price.

6. Substitute the following for § 916.61:

§ 916.61 *Computation of the uniform price.* For each month, the Market Administrator shall compute the 3.5 percent value of producer milk by—

(a) Combining into one total the individual values of milk of all handlers computed pursuant to § 916.60, adjusted by any charges or credits pursuant to § 916.75 (a) and (b);

(b) Adding, if the weighted average butterfat test of all producer milk represented in paragraph (a) of this section is more than 3.5 percent, or subtracting, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such average butterfat test from 3.5 percent by the butterfat differential provided in § 916.71 multiplied by 10;

(c) Add an amount equal to the total value of the location differential pursuant to § 916.72;

(d) Adding not less than one half of the unobligated balance in the producer equalization fund;

(e) Dividing the resulting amount by the hundredweight of milk received from producers; and

(f) Subtracting not less than 6 cents or more than 7 cents. The result shall be known as the uniform price for producer milk of 3.5 percent butterfat content.

7. Substitute the following for § 916.62:

§ 916.62 *Notification.* On or before the 12th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing for such month:

(a) The amount and value of his producer milk in each class;

(b) The uniform price computed pursuant to § 916.61 and the butterfat differential computed pursuant to § 916.71;

(c) The amount to be paid by such handler pursuant to § 916.72 and § 916.73; and

(d) The amount due such handler from the producer-equalization fund or the amount to be paid by such handler to the producer-equalization fund, as the case may be.

8. Delete "16th", in § 916.70 (b) (1) and substitute "15th".

9. Add the following as § 916.78:

§ 916.78 *Producer-equalization fund.* The market administrator shall establish and maintain a separate fund, known as the "producer-equalization fund" into which he shall deposit all payments received pursuant to paragraph (a) of this section and out of which he shall make all payments pursuant to paragraph (b) of this section.

(a) *Payments to the producer-equalization fund.* On or before the 13th day after the end of each month, each handler whose value of milk is required to be computed pursuant to § 916.60 shall pay to the market administrator any amount by which such value for such month is greater than the minimum amount required to be paid by him pursuant to § 916.70.

(b) *Payments out of the producer-equalization fund.* On or before the 14th day after the end of each month, the market administrator shall pay to each handler any amount by which the value of milk for such handler for the month pursuant to § 916.60 is less than the total minimum amount required to be paid by him pursuant to § 916.70, less any unpaid obligations of such handler to the market administrator pursuant to paragraph (a) of this section: *Provided,* That if the balance in the producer-equalization fund is insufficient to make all payments to all such handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

Proposed by the Borden Company:

10. Amend § 916.6 to read as follows:

§ 916.6 *Pool plant.* "Pool plant" means a plant (except one which is exempted pursuant to § 916.101) from which either (a) 20 percent or more of the total milk received at such plant during the month is disposed of in the marketing area as Class I other than to another pool plant, or (b) 20 percent or more of the total milk received from dairy farmers at such plant during the month is moved to a pool plant(s) as described in paragraph (a) of this section.

11. Amend § 916.7 to read as follows:

§ 916.7 *Handler.* "Handler" means: (a) A person who operated a pool plant or a plant in which milk is pasteurized or packaged and from which Class I milk is disposed of in the marketing area.

(b) A cooperative association with respect to milk customarily received by a handler as described under paragraph (a) of this section, which is diverted to a non-handler for the account of the association.

12. Amend § 916.73 to read as follows:

§ 916.73 *Expense of administration.* As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 13th day after the end of each month five cents per hundredweight, or such amount not exceeding five cents per hundredweight as the Secretary may prescribe, with respect to all receipts within the month of milk from producers and to other source milk which is sold in the marketing area as Class I:

Proposed by Lakeside Dairy:

13. Amend § 916.5 to include all of Wexford County and Missaukee and Roscomon Counties.

Proposed by Dairyland Cooperative Creamery Company:

14. Amend § 916.6 to read:

§ 916.6 *Pool Plant.* "Pool plant" means a plant from which either (a) 30 percent or more of the total milk received at such plant during the month (with the exception of the months of July and August) is disposed of in the marketing area as Class I other than to another pool plant: *Provided,* That the total quantity distributed on all routes operated inside or outside the marketing area is equal to 50 percent or more of producer receipts, or (b) 20 percent or more of the total milk received from dairy farmers at such plant during the month is moved to a pool plant(s) as described in paragraph (a) of this section.

Proposed by Gabier Dairy:

15. In § 916.82 change "200 points" to "100 points".

Proposed by the Dairy Division, Agricultural Marketing Service:

16. Provide for the classification and accounting for month end inventories of fluid milk products as Class II milk, subject to an additional charge if allocated to Class I utilization in the following month.

17. Add a new § 916.54 as follows:

§ 916.54 *Use of equivalent price.* If for any reason a price quotation required by this order for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

18. Make such changes as may be required to make the entire order, as amended, conform with any amendments thereto which may result from this hearing.

Copies of this notice of hearing, and the order now in effect, may be procured from the Market Administrator, 916 East Front Street, Traverse City, Michigan, or the Hearing Clerk, Room 112 Administration Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Filed at Washington, D. C., this 6th day of February 1957.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 57-1019; Filed, Feb. 8, 1957; 8:50 a. m.]

[7 CFR Part 967]

[Docket No. AO-170-A10]

MILK IN SOUTH BEND-LA PORTE, INDIANA, MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of

1937, as amended (7 U. S. C. 601 et seq.) and the applicable rules of practice and procedure as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposals to amend the tentative marketing agreement and the order, as amended, regulating the handling of milk in the South Bend-La Porte, Indiana, marketing area. Interested persons may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D. C., not later than the close of business the 10th day after publication of this decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The hearing, on the record of which the proposed amendments to the tentative marketing agreement and to the order, as amended, were formulated, was conducted at South Bend, Indiana, on August 14–15, 1956, pursuant to notice thereof which was issued on August 9, 1956, (21 F. R. 5970).

The material issues of record related to:

1. The classification and pricing of milk used in making cottage cheese. (Proposals 1 and 6.)
2. A revision of the transfer provisions. (Proposal 2).
3. A revision of the list of condenseries appearing in the basic formula. (Proposal No. 4).
4. Elimination of the butter-cheese portion of the basic formula. (Proposal No. 5).
5. The price level for Class I milk, including the supply-demand adjustment. (Proposal No. 7.)
6. Classification and pricing of butterfat used for making butter. (Proposals 11 and 12.)
7. Conforming changes (Proposal No. 13.)

In addition to the foregoing issues, certain other matters were referred to in Proposals 3, 8, 9 and 10 of the hearing notice. They were either abandoned or not specifically supported at the hearing. These proposals included a revision of the allocation provisions, the placing of a limitation on diversions of milk to nonregulated plants, and a new Class III classification and price. It is concluded that no further action with respect to these matters should be taken on the basis of this hearing.

Findings and conclusions. The following findings and conclusions on the material issues covered in this decision are based upon evidence in the record of the hearing:

1. A new classification and price for milk used to produce cottage cheese should be established.

Producers proposed to establish a separate classification and price for milk used to produce cottage cheese. They supported their proposal on the basis that a new classification and price are necessary to reflect the additional cost to producers of supplying milk of the quality required by the health departments of the marketing area for use in cottage cheese.

One unregulated plant operator testified at the hearing in opposition to the proposed price increase but on questioning stated the opinion that producers should receive more money for Grade A milk used in dairy products than for ungraded milk. This operator has a plant near South Bend in which ice cream, ice cream mix, and cottage cheese are manufactured. Approximately 25 percent of the cottage cheese production of his plant is sold in the South Bend-LaPorte marketing area. It was stated that milk received from the reserve supplies of regulated handlers would provide the necessary Grade A milk for the cottage cheese that he sells in the marketing area. This operator at present receives no ungraded milk in his plant.

The South Bend-LaPorte marketing area is comprised of the cities of South Bend, LaPorte, Mishawaka, and Michigan City, Indiana. Recently, the cities of South Bend, LaPorte and Michigan City adopted similar milk ordinances to become effective January 1, 1957. Under these ordinances all cottage cheese sold within each of these cities must be produced from Grade A milk. Some cottage cheese which heretofore has been sold in the market has been made from dry curd produced from ungraded milk. This practice will be prohibited under the new ordinances.

Beginning January 1, 1957, cottage cheese disposed of in a large portion of the marketing area must be made from milk meeting the same inspection requirements as that for fluid disposition. Cottage cheese will provide a regular, year-round outlet for inspected milk (skim milk and butterfat) and under this circumstance should not be considered a distress outlet for Class I reserves. It is important and economically sound that milk for this use should contribute to the increased cost of obtaining the year-round supply of Grade A milk necessary for all purposes which require this type of supply. Producers should receive a price differential over manufacturing milk prices to compensate for the higher costs of producing Grade A milk. The expansion of producer receipts to supply all the milk needed for cottage cheese would reduce returns to producers unduly if the present classification and pricing provisions were retained in the order. Therefore, it is concluded that a new Class II milk classification should be established for producer milk used to produce cottage cheese. Present Class II milk other than milk for cottage cheese should be redesignated Class III milk without a change in the price formula. The testimony and findings concerning an appropriate price level for milk used for cottage cheese are discussed below.

Proponents proposed a price formula for skim milk used to produce cottage cheese as follows: the prevailing price per pound of spray process nonfat dry milk for human consumption (Chicago area manufacturing plants), minus 3.2 cents, multiplied by 8.5. The 3.2 cent deduction was revised from 2.0 cents at the hearing. They contended that the price of Grade A skim milk for cottage cheese should not be less than the cost of its equivalent in nonfat dry milk of Grade A quality which might be secured from alternative sources. Producers explained that the deduction of 3.2 cents represented an adjustment to the price of nonfat dry milk to offset the costs to handlers of such operations as receiving and cooling and field work expense; the loss on butterfat separated from milk used to produce cottage cheese; and hauling charges for reserve butterfat moved to manufacturing plants. The total handling costs, amounting to 28.6 cents per hundredweight, suggested by producers were represented as the average handling costs for fifteen plants operated by the producers' association in the Chicago milkshed. The deduction of 3.2 cents was suggested after allowance also for the differential in price per pound usually received for nonfat dry milk of Grade A quality. The factor "8.5" represents the suggested yield of nonfat dry milk from a hundred pounds of skim milk.

Producers suggested further at the hearing that butterfat used to cream cottage cheese be priced at the present order price for Class II butterfat.

The expression of the South Bend-LaPorte Class II price in terms of a differential over the basic formula price will recognize an additional value for Grade A milk used for cottage cheese over the level of manufacturing prices and also will enable the price of skim milk to fluctuate with prices for manufacturing milk. Milk used to produce cottage cheese and that contained in fluid cream, among other products, is classified and priced as Class II milk under the Chicago order, on a price level above that for manufacturing uses such as butter, nonfat dry milk, cheese and evaporated milk. At the present time, the minimum price for butterfat in Class I milk under the South Bend-LaPorte order is aligned with the minimum price for butterfat in Class II milk under the Chicago order. The annual average price in 1955 for Class I butterfat was approximately 8 cents per pound over the manufacturing level of prices. The price of butterfat in Class II milk (new) should be in close alignment with the price of Class II butterfat (cream) under the Chicago order since butterfat at this price is available to Chicago handlers with fluid milk plants serving the South Bend-LaPorte marketing area. By using the Class I butterfat price to price Class II butterfat also the supply-demand adjustment will apply to the Class II butterfat price in the same manner as it applies to the Class I butterfat price. Therefore, it is concluded that the price of milk used to produce cottage cheese should be the basic formula price plus 70 cents for the months of August through February, and 45 cents for the months of March through July. Such Class II price differentials take into account the competitive influence originating in the Chicago market and also follow the seasonal pattern of pricing provided under the South Bend-LaPorte

order. After deducting the value of 3.5 pounds of butterfat in Class II milk at the proposed level, there would result a residual price for skim milk used in cottage cheese averaging, on the basis of 1955 data, approximately 32 cents above the price for skim milk for manufactured milk products included in the class to be redesignated as Class III milk. In view of the conclusion that a portion of the added value of milk for cottage cheese should be attributed to the butterfat, it is further concluded that the proposed formula adapts itself to the present over-all plan for skim milk and butterfat pricing more readily than the type of formula proposed by producers.

2. The transfer provisions should be modified only in conformity with the revised plan for the classification of milk.

Producers proposed that the transfer provisions be modified so that producer milk transferred or diverted from a regulated plant and then transshipped by an unregulated plant to a second unregulated plant without being received at the first unregulated plant would be classified on the basis of the utilization of such milk at the second unregulated plant. In addition, the transferred or diverted milk would be required to be commingled with receipts of other milk or cream at the unregulated plant where actually received, or the handler would not be allowed to claim Class II product utilization.

The producers' proposal to amend the transfer provisions in this manner is based on the allegation that certain quantities of milk which have been transferred or diverted by handlers, and classified as Class II at an unregulated plant, were not actually received at such plant. Presumably such milk, in unknown quantities, was moved to a second unregulated plant where it was used or disposed of for bottling purposes.

At the present time, the order provides that milk transferred or diverted from a regulated plant to an unregulated plant may be classified Class II if the respective parties involved in the transfer or diversion mutually indicate that such milk was utilized in Class II. The order requires the market administrator to check the records of the unregulated plant in order to determine whether the milk moved to the unregulated plant was received at such plant and an amount of milk at least equivalent to such transfer was so utilized in the plant.

The main purpose of allowing a Class II classification on milk transferred or diverted from regulated to unregulated plants in this market has been to facilitate the movement of reserve milk to plants where manufacturing facilities are available. In this connection, it has been considered important that a certain degree of flexibility be maintained in the provisions governing the disposition of reserve milk. Stringent transfer provisions could enhance the difficulties of the small volume handlers in disposing of minor quantities of reserve milk. The testimony does not reveal specific instances of abuse of these provisions. Moreover, the present order transfer provisions recognize the difficult administrative task of ascertaining the particular use of each hundred-weight of producer milk moved to an unregulated plant. There are administrative limitations involved in accounting for specific "lots" of transferred or diverted milk according to its actual, or physical, disposition at the unregulated plant. It does not appear that the problem complained of warrants the additional administrative difficulties involved in accounting for specific "lots" of milk.

For these reasons it is concluded that the proposed modification of the transfer provision should not be adopted.

3. The list of condenseries used in computing the basic formula price should be revised.

The list of condenseries, the pay-prices of which are used in connection with price formulas under the order, should include only those plants which are currently operating, and for which producer pay-prices are reported. The last revision of the list, in December 1953 (18 F. R. 8671), deleted the names of the Borden Company plants at Black Creek and Greenville, Wisconsin, and the Carnation Company at Jefferson, Wisconsin. Official notice is taken of the termination of operations at the Pet Milk Company Hudson, Michigan. In addition, the Carnation Company plants at Berlin and Chilton, Wisconsin, have terminated operations. The names of the following plants therefore should be deleted from the list appearing in § 967.50 (a): Carnation Company, Berlin, Wisconsin, Carnation Company, Chilton, Wisconsin, and Pet Milk Company, Hudson, Michigan. For convenience, the full list as revised is incorporated in the order amendments included in this decision.

4. The butter-cheese portion of the basic price formula should be deleted.

Producers proposed that the "condensery-code" price formula be deleted as a basic price formula. Handlers presented no opposition testimony to this proposal.

The basic price formula employs market prices for Chicago Grade A butter and Wisconsin State Brand Cheddar Cheese. In the present order, the basic formula price for any month is the highest price resulting from three formula prices, reflecting the values of milk used for condensing, for making butter and cheese, and for making butter and nonfat dry milk. The condensery-code price formula is one of the three. It reflects the value of milk used for butter and cheese.

This component of the basic price formula has not had significant effect in the South Bend order during the past several years. During the entire period January 1952 through June 1956, the butter-cheese component of the basic price formula was never sufficiently high in any month to be used as a basis of pricing Class I milk.

The necessity of appropriate alignment of South Bend milk prices with those established under the Chicago order is recognized. The record of this hearing contains ample evidence in this respect. The condensery-code price formula has already been deleted from the basic price formula of the Chicago order. In order to preserve further the alignment of prices under Orders No. 67 and 41, it is concluded that the condensery-code price formula should be deleted from Order No. 67.

5. No change should be made in the Class I price differential. Non-substantive changes in the language of the supply-demand adjuster should be adopted.

The major producers' cooperative supplying milk to regulated handlers proposed that the Class I milk price differential, which is added to the basic formula price, be changed to $1.30 for each month of the year. The Class I milk price differentials now provided in the order are $1.30 for the months of August through December, $1.10 for January and February, and 90 cents for the remaining months of the year. The annual monthly average of these differentials is $1.10.

The proposal to establish a Class I differential of $1.30 for each month was based on the following: (1) Production costs have increased, (2) the proposed price increase would not result in an undesirable price alignment with surrounding markets, (3) the base-excess plan eliminates the need for seasonal differentials, and (4) the price increase proposed is moderate and will not increase production.

The proposal was not supported on the basis of a need to increase the supply of milk for the market, but rather to increase returns to producers on the volume of milk currently being produced. The elimination of seasonal differentials was urged on the basis that the present base-excess plan is sufficient incentive for producers to establish a pattern of uniform milk production throughout the year.

Producers' proposal would have the effect of increasing the annual level of the Class I milk price. The present stated Class I differentials average $1.10 on an annual basis. This level of Class I price differentials (not including plus or minus supply-demand adjustments) has been provided for in Order No. 67 since November 1, 1952. Immediately prior to that date the annual average Class I differential was approximately 85 cents per hundredweight.

Between 1952 and 1955 Class I sales increased 33 percent, with the largest annual increase occurring in 1955. During this 4-year period receipts of producer milk increased 39 percent. This increase in total producer receipts is due to two important factors: (1) the 27 percent increase in production per farm, and (2) a 9 percent increase in producer numbers in this period.

During the first 6 months of 1956 production continued to increase, being up 18 percent over the corresponding months of the year before. Also, producer numbers increased 5 percent in the same period. Class I sales, during the first 6 months of 1956 increased 12 percent over the same period a year ago. The increase in producer receipts represents a somewhat greater volume of milk than the increase in Class I sales since the Class I sales total is less than total

producer receipts. The fall and winter months are normally the months of relatively low milk production in the South Bend-LaPorte market. In the fall of 1955, the monthly percentages of producer milk utilized as Class I milk were as follows:

August	77.9	November	83.4
September	79.4	December	81.5
October	79.0		

It is concluded from the above that market supplies have responded adequately to the price levels (as modified by the supply-demand adjuster in response to changing conditions) which have prevailed during recent years. Supplies of producer milk at the present time serve to fulfill Class I milk requirements. It is concluded that an increase in the annual level of the Class I price should not be adopted.

The amount of seasonal variation in Class I price differentials was reduced with the amendment of December 1, 1954, which also made effective a base-excess plan of distributing returns to producers. Official notice is taken of the decision of the Secretary issued November 24, 1954, which supported such amendment. It was found appropriate at that time to establish a seasonal pattern of fixed differentials which would align prices closer with the Class I prices paid by handlers in surrounding marketing areas. While it was generally acknowledged that the adoption of the base-excess plan diminishes the need for seasonal variation in the Class I price, it was further recognized by interested parties that it is necessary, under present conditions, to have some seasonal change in the differentials in order to keep the price in this market competitive throughout the year with prices in areas with adjoining or overlapping milksheds. Of these, Chicago is the most important.

It is significant, too, that a substantial proportion of the fluid milk distributed within the South Bend-LaPorte marketing area originates in plants regulated and priced by the Chicago order. Although there has been marked improvement in the seasonal variation of producer deliveries during the past several months, and it is possible that further improvement would result from the elimination of seasonal pricing in conjunction with the base plan, the Class I price must remain competitive with the Chicago price as well as with prices in other surrounding areas in which regulated handlers distribute considerable quantities of Class I milk. The current hearing did not develop information on which to conclude that there is less need to maintain the South Bend-LaPorte and Chicago Class I prices in close relationship than was the case at the time the present price schedule was adopted.

It is concluded that the present seasonal differences in Class I price differentials should be retained.

Producers proposed that the present language of the supply-demand provision be modified to state that the adjustment in price (increase or decrease) will in each instance be the same as that resulting from action of the supply-demand adjuster contained in the Chicago order. The proposal was supported primarily on the basis that any modification of the Chicago supply-demand provision automatically should have a corresponding result under the South Bend-LaPorte order without the necessity of a hearing. Handlers expressed no opposition to this proposal.

The language of the present South Bend-LaPorte supply-demand adjustment provision has been revised on several occasions in order that it might be kept the same as the comparable provisions of Order No. 41 for Chicago. The data currently used to compute the adjustment are Chicago supply-sales data, not those of the South Bend-LaPorte market. Since it has been indicated that prices in the two markets should be closely aligned, it would be appropriate to adopt the proposed language in the South Bend-LaPorte order. This would not change the substantive effect of the present supply-demand provision but would obviate the necessity of modifying language in the South Bend-LaPorte order whenever the Chicago supply-demand provision might be amended. Should it become desirable to provide different supply-demand adjusters in the respective markets, a separate hearing on this order could be proposed to consider such an action. It is concluded that the proposal concerning the language of the supply-demand adjustment provision should be adopted.

6. A separate classification and price for butterfat used in churning butter should not be adopted.

Handlers proposed that butterfat used in churning butter should have a separate classification, and be priced the same as 92-score butter on the Chicago market.

In supporting the proposal, handlers testified that in 1955, an average of 24,000 pounds of butterfat per month was used for churning operations, usually in unregulated plants. For the first six months of 1956, approximately 31,000 pounds of butterfat per month were used in this manner. Much of such butterfat was churned on a custom basis, presumably returned as butter to regulated handlers for sale to their customers. Handlers contended that they lose 5 to 10 cents per pound on such butterfat, i. e., the difference between the South Bend-LaPorte Class II butterfat price and their sale price to butter manufacturing plants.

The proposal is intended to relieve handlers of losses incurred by them in the disposition of butterfat for churning. They argued that producers should assume a portion of these losses since the handlers have had to accept more butterfat than actually needed in procuring a sufficient quantity of milk for fluid disposition. However, it was conceded by proponents that there is opportunity in the over-all operation of a fluid milk business to recover whatever losses are incurred whether in the cream department or elsewhere.

It was further argued that the adoption of the proposal would encourage producers to deliver milk of lower butterfat content, in closer conformance with the consumer demand for products of lower butterfat content.

Producers contended that cream for churning can be sold at the present Class II butterfat price and that to adopt the proposal would shift to producers the losses resulting from poor sales outlets.

At the present time, butterfat used for churning butter is classified in Class II and priced accordingly. The Class II price for butterfat is computed by adding 20 percent to the Chicago 92-score butter price and then multiplying by 1,000. This has resulted in annual average Class II butterfat prices per hundredweight in 1952, 1953, 1954 and 1955 of $87, $79, $72 and $69, respectively. During that period, the proposal would have resulted in annual average prices for butterfat used for butter of $72, $66, $60 and $57, representing a significant reduction from the present level.

A large portion of the reserve quantity of butterfat in the market is utilized in ice cream and ice cream mix, and not necessarily utilized for churning. Approximately 84 percent of the total Class II butterfat during the 18 months prior to the hearing was utilized in products yielding higher returns to handlers than butterfat for churning. Approximately 16 percent of the Class II butterfat during this period was disposed of for churning. The latter quantity is equivalent to less than one percent of the total butterfat in producer milk. Recognizing that reserves are necessary for a handler to conduct a fluid milk operation, the small quantity of butterfat which is disposed of for churning may not be considered burdensome. It is concluded that a separate classification and pricing for butterfat used for churning should not be adopted.

7. Other changes in the order involve the redesignation of paragraph references to conform with recommendations contained herein to amend the classification and pricing provisions of the order.

General findings. (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in the marketing area, and minimum prices specified in the proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed order, as amended, and as hereby proposed to be further amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on proposed findings and conclusions. Briefs were filed which contained statements of fact, proposed find-

ings and conclusions, and arguments with respect to the provisions of the proposed amendments. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that the findings and conclusions proposed in the briefs are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with the conclusions in this recommended decision.

Recommended marketing agreement and amendments to the order. The following amendments to the order, as amended, regulating the handling of milk in the South Bend-LaPorte, Indiana, marketing area are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out (the recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be identical with those contained in the order, as amended, and as hereby proposed to be further amended):

1. In § 967.22 (i) (1) delete the phrase "pursuant to § 967.51" and substitute "pursuant to §§ 967.51 through 967.53".

2. Delete § 967.41 and substitute the following:

§ 967.41 *Classes of utilization.* Subject to the conditions set forth in §§ 967.43 and 967.44, the skim milk and butterfat described in § 967.40 shall be classified by the market administrator on the basis of the following classes:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat (1) disposed of (except as provided in paragraph (c) (1) of this section) in the form of milk, skim milk, flavored milk, flavored milk drink, and buttermilk; (2) disposed of as cream (sweet or sour) and as any fluid mixture of cream and milk (or skim milk) containing not less than 6 percent butterfat (but not including ice cream or other frozen dessert mixes disposed of to a commercial processor, or any mixture disposed of in containers or dispensers under pressure for the purpose of dispensing a whipped or aerated product); (3) disposed of in fluid or frozen form as concentrated milk, flavored milk, flavored milk drink not sterilized and not otherwise specified under paragraph (c) of this section, and as eggnog; (4) in shrinkage of receipts of producer milk computed pursuant to § 967.42 which is in excess of 2 percent of such receipts; and (5) not specifically accounted for as any item named in this paragraph or as Class II milk or Class III milk.

(b) Class II milk shall be all skim milk and butterfat used to produce cottage cheese.

(c) Class III milk shall be all skim milk and butterfat (1) disposed of in bulk in the form of milk, skim milk, buttermilk, and cream to any manufacturer of candy, soup or bakery products and used in such products; (2) in condensed milk or skim milk (sweetened or unsweetened) disposed of to commercial food processors; (3) disposed of (or used to produce, in the case of ice cream and frozen desserts and mixes (liquid or powdered) for such products, and aerated cream products) as sweetened condensed milk in hermetically sealed cans, evaporated milk, ice cream, ice cream mix, other frozen desserts and mixes, storage cream, butter, cheese and nonfat dry milk solids; (4) dumped or disposed of for livestock feed as skim milk (including that in whole milk dumped), flavored milk, flavored milk drink and buttermilk; (5) disposed of as a milk product other than any of those specified in paragraph (a) (1), (2) and (3) in paragraph (b) of this section, and in subparagraphs (1), (2), (3) and (4) of this paragraph; (6) contained in monthly inventory variations; (7) in actual shrinkage of receipts of producer milk computed pursuant to § 967.42 but not in excess of 2 percent of such receipts; and (8) in actual shrinkage of other source milk computed pursuant to § 967.42.

3. Delete § 967.44 and substitute the following:

§ 967.44 *Transfers.* Skim milk or butterfat disposed of by a handler either by transfer or diversion shall be classified:

(a) As Class I milk if transferred or diverted to another handler (except a producer-handler) in the form of any item named in § 967.41 (a) (1), (2), or (3) unless utilization in another class is matually indicated in writing to the market administrator by both handlers on or before the 9th day after the end of the delivery period within which such transaction occurred: *Provided,* That skim milk or butterfat so assigned to a particular class shall be limited to the amount thereof remaining in such class in the plant of the transferee handler after the subtraction of other source milk pursuant to § 967.46, and any excess of such skim milk or butterfat, respectively, shall be assigned to Class I milk;

(b) As Class I milk if transferred or diverted to a producer-handler in the form of any item named in § 967.41 (a) (1), (2) or (3);

(c) As Class I milk if transferred or diverted to a plant not an approved plant in the form of any item named in § 967.41 (a) (1), (2) or (3) unless (1) the transferor handler claims use in another class on the basis of utilization in the unapproved plant in his report submitted to the market administrator pursuant to § 967.30 for the month within which such transaction occurred, (2) the receiver maintains books and records showing the utilization of all skim milk and butterfat at his plant which are made available if requested by the market administrator for the purpose of verification, and (3) in such receiver's plant there actually had been used during such delivery period in the use indicated in such report, not less than an equivalent amount of skim milk and butterfat derived by him from milk or cream: *Provided,* That if upon inspection of such receiver's records of such plant, there had not been used in such indicated use an equivalent amount of skim milk and butterfat so derived, the remaining pounds shall be classified as Class I milk.

4. In § 967.45 delete the phrase "in Class I milk and Class II milk" and substitute "in each class".

5. In § 967.46 (c) delete the phrase "pursuant to § 967.41 (b) (7), in series beginning with Class II milk" and substitute therefor the phrase "pursuant to § 967.41 (c) (7), in series beginning with Class III milk".

6. In § 967.46 (e) delete the phrase "with Class II milk" and substitute therefor the following "with Class III milk".

7. Delete that portion of § 967.50 preceding paragraph (a) thereof and substitute therefor the following:

§ 967.50 *Basic formula price.* The basic formula price to be used in computing the prices of Class I milk and Class II milk for the delivery period shall be the higher of the prices computed by the market administrator for the delivery period immediately preceding pursuant to paragraphs (a) and (b) of this section:

8. Delete the list of plants and locations appearing in § 967.50 (a) and substitute therefor the following:

Present operator:	*Location*
Borden Co	Mount Pleasant, Mich.
Borden Co	New London, Wis.
Borden Co	Orfordville, Wis.
Carnation Co	Oconomowoc, Wis.
Carnation Co	Richland Center, Wis.
Carnation Co	Sparta, Mich.
Pet Milk Co	Belleville, Wis.
Pet Milk Co	Coopersville, Mich.
Pet Milk Co	New Glarus, Wis.
Pet Milk Co	Wayland, Mich.
White House Milk Co	Manitowoc, Wis.
White House Milk Co	West Bend, Wis.

9. Delete § 967.50 (b) in its entirety.

10. Redesignate § 967.50 (c) as § 967.50 (b).

11. Delete the proviso in § 967.51 (a) and substitute therefor the following: "*Provided,* That such Class I price differential shall be increased or decreased, respectively, by the supply-demand adjustment computed under Federal Order No. 41 regulating the handling of milk in the Chicago, Illinois, marketing area."

12. In § 967.51 (b) delete the reference to "§ 967.50 (c) (2)" and substitute therefor the reference "§ 967.50 (b) (2)."

13. In § 967.51 (b) delete the reference to "§ 967.50 (c)" and substitute therefor the reference "§ 967.50 (b)."

14. Delete § 967.51 (d) in its entirety.

15. Delete § 967.52 and substitute therefor the following:

§ 967.52 *Class II milk prices.* The minimum prices per hundredweight to be paid by each handler for skim milk and butterfat in producer milk received and classified as Class II milk for each delivery period shall be computed by the market administrator as follows:

(a) Add to the basic formula price (3.5 percent milk), the following amount for the delivery period indicated: August, September, October, November, December, January and February, $0.70; all others $0.45.

(b) The amount computed pursuant to § 967.51 (b) shall be the price of butterfat in Class II milk.

(c) Subtract from the price computed pursuant to paragraph (a) of this section the amount specified in paragraph (b) of this section times 0.035, and divide the remainder by 0.965. The resulting amount shall be the price of skim milk in Class II milk: *Provided*, That in no event shall the price of skim milk pursuant to this paragraph be less than the price computed pursuant to § 967.53 (b).

16. Add a new § 967.53 as follows:

§ 967.53 *Class III milk prices.* The minimum prices per hundredweight to be paid by each handler for skim milk and butterfat in producer milk received and classified as Class III milk for each delivery period shall be computed by the market administrator as follows:

(a) The price of butterfat in Class III milk shall be the producer butterfat differential computed for such delivery period pursuant to § 967.81 times 1000.

(b) The price of skim milk in Class III milk shall be computed by subtracting the hundredweight price of butterfat computed pursuant to paragraph (a) of this section times 0.035, from the price determined pursuant to § 967.50 (a), and divide the remainder by 0.965.

17. Delete § 967.71 (e) (1) and substitute therefor the following:

(1) Compute the total value on a 3.5 percent butterfat basis of excess milk included in the computations pursuant to paragraph (a) of this section by multiplying the hundredweight of such excess milk not in excess of the total quantity of Class III milk included in these computations by the price for Class III milk of 3.5 percent butterfat content, and multiplying the hundredweight of such excess milk in excess of such Class III milk in series by the price for Class II milk and Class I milk, respectively, of 3.5 percent butterfat content, and adding together the resulting amounts.

18. In § 967.80 (b) delete the phrase "Class I milk and Class II milk" and substitute therefor the following "Class I milk, Class II milk and Class III milk."

Filed at Washington, D. C., this 6th day of February 1957.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 57-1013; Filed, Feb. 8, 1957; 8:50 a. m.]

[7 CFR Part 997]

FILBERTS GROWN IN OREGON AND WASHINGTON

PROPOSED ADMINISTRATIVE RULE FOR OBTAINING CANDIDATES IN CONNECTION WITH NOMINATION ELECTIONS FOR CERTAIN MEMBERS AND ALTERNATE MEMBERS OF FILBERT CONTROL BOARD

Notice is hereby given that the Department is considering the issuance of the administrative rule herein set forth pursuant to the provisions of Marketing Agreement No. 115, as amended, and Marketing Order No. 97, as amended (7 CFR Part 997), regulating the handling of filberts grown in Oregon and Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

Prior to final issuance of such rule, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., and which are received not later than the close of business on the 7th day after publication of this notice in the FEDERAL REGISTER, except that if such day should fall on a holiday, Saturday, or Sunday, such submission may be received by the Director not later than the close of business on the next following workday.

Section 997.32(b) of the aforesaid marketing agreement and order, as amended, provides for the submission, by petition, prior to February 10th of each fiscal year, of names of grower candidates to represent growers who market their production through other than cooperative handlers for inclusion with ballots to be used in voting for nominees for positions on the Filbert Control Board. It is further provided in such section that, if the Secretary should determine that the aforementioned procedure is unsatisfactory to the growers involved because it is too difficult to administer, it does not result in the names of a sufficient number of qualified candidates being submitted with the ballots, or it should be changed for other reasons, he may change this procedure through the formulation and issuance of superseding regulations.

Experience up to this time has indicated that a reasonably adequate number of such candidates for balloting purposes has not been obtained through the petition method. In the circumstances, this Department is considering issuance of the following supplemental procedure.

§ 997.432 *Nominations.* Whenever petitions submitted pursuant to § 997.32 (b) fail to result in submission of at least twice as many names as there are positions to be filled, the Board shall request County Agricultural Agents in all filbert producing counties which produced an average of at least 10 percent of the total production in the area of production during the preceding year, to recommend a qualified grower for each position to be included on the ballot.

Dated: February 6, 1957.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 57-1020; Filed, Feb. 8, 1957; 8:50 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 130]

WIND RIVER IRRIGATION PROJECT, WYOMING

ORDER FIXING OPERATION AND MAINTENANCE CHARGES

Pursuant to section 4 (a) of the Administrative Procedure Act of June 11, 1946 (Public Law 404, 79th Congress, 60 Stat. 238) and authority contained in the Acts of Congress approved August 1, 1914; May 18, 1916; and March 7, 1928 (38 Stat. 583; 25 U. S. C. 383; 39 Stat. 142; and 45 Stat. 210; 25 U. S. C. 387), and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs (Order No. 2508; 14 F. R. 258), and by virtue of authority delegated by the Commissioner of Indian Affairs to the Area Director (Bureau Order No. 351, Amendment No. 1, 16 F. R. 5454-7), notice is hereby given of intention to modify the notice published in the FEDERAL REGISTER under date of January 8, 1957, § 130.95 of Title 25, dealing with irrigable lands of the Wind River Irrigation Project to read as follows:

In compliance with the provisions of the acts of August 1, 1914 and March 7, 1928 (39 Stat. 583, 25 U. S. C. 385; 45 Stat. 210, 25 U. S. C. 387), the notice published under date of January 8, 1957, is hereby modified to read: Interested persons are hereby given opportunity to participate in preparing the proposed amendments by submitting their views and data or arguments, in writing, to the Area Director, Bureau of Indian Affairs, Billings, Montana, within forty-four (44) days from the date of publication of this notice of intention to modify in the daily issue of the FEDERAL REGISTER.

PERCY E. MELIS,
Area Director.

[F. R. Doc. 57-996; Filed, Feb. 8, 1957; 8:46 a. m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 146a, 146b, 146c, 146d, 146e]

PENICILLIN AND PENICILLIN-CONTAINING DRUGS INTENDED FOR USE BY THE INTRAMAMMARY ROUTE

NOTICE OF PROPOSED RULE MAKING

Notice is given that the Commissioner of Food and Drugs, on his own initiative, and in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507 (f), 59 Stat. 463, as amended; 21 U. S. C. 357 (f)) and under authority delegated to him by the Secretary of Health, Education, and Welfare (20 F. R. 1596) hereby offers an opportunity to all interested persons to submit their views in writing to the Hearing

Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER on the proposals set forth below. Written views and comments should be filed in quintuplicate.

It is proposed to amend all the regulations relating to penicillin and penicillin-containing drugs (21 CFR Parts 146a, 146b, 146c, 146d, 146e) to establish 100,000 units of penicillin as the maximum single dose in those preparations intended for use in the treatment of mastitis in milk-producing animals and administered by the intramammary route.

The proposed amendments are based on the following facts that have come to the attention of the Food and Drug Administration:

1. Substantial quantities of penicillin are used in the treatment of mastitis in milk-producing animals by the intramammary route of administration. If the milk from animals so treated is consumed too soon after the last treatment, it will contain penicillin residues. Notwithstanding the fact that since 1951 § 3.25 of Title 21 of the Code of Federal Regulations has required the labeling of such drugs to bear the statement, "Important: Milk from treated segments of udders should be discarded or used for purposes other than human consumption for at least 72 hours after the last treatment," significant quantities of penicillin are present in the Nation's milk supply. This has been confirmed by three nationwide surveys conducted by the Food and Drug Administration in which samples of market milk were collected and tested for penicillin.

2. In collaboration with representatives of the Food and Drug Administration, these results were reviewed by more than 30 of the country's medical authorities in the fields of antibiotic therapy, allergy, and pediatrics. It was the consensus that these concentrations of penicillin in milk might possibly cause allergic reactions in those consumers that are extremely sensitive to the drug.

3. When penicillin preparations specifically intended for use in the treatment of mastitis by intramammary infusion were first certified in 1947, it was shown that repeated doses of 25,000 units for each infected segment of the udder were effective in the treatment of those infections caused by penicillin-sensitive microorganisms. Since that time, this dose has been gradually increased by some manufacturers of these preparations to 1,500,000 units. There is no evidence that these massive doses increase the clinical efficiency of the drug. Furthermore, the time required for penicillin to be eliminated from the milk of animals treated with these large doses is longer than with smaller doses.

4. The proposed amendment may not eliminate penicillin from the milk supply. If it does not, consideration will be given to prohibiting the use of penicillin in any amount in preparations intended for treatment of mastitis by the intramammary route.

Dated: February 5, 1957.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F. R. Doc. 57-994; Filed, Feb. 8, 1957; 8:45 a. m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

ALAMOSA AUCTION ET AL.

PROPOSED POSTING OF STOCKYARDS

The Director of the Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 202), and should be made subject to the provisions of the act.

Alamosa Auction, Alamosa, Colo.
Cortez Sale Barn, Cortez, Colo.
Craig Livestock Auction, Craig, Colo.
Delta Sales Yard, Delta, Colo.
Alsbury's Sales Pavilion, Glenwood Springs, Colo.
Grand Junction Livestock Auction, Grand Junction, Colo.
Valley Livestock Auction Co., Grand Junction, Colo.
H. & G. Livestock Commission Co., Montrose, Colo.
McCanless-Hess Livestock Commission Co., Pueblo, Colo.
Rifle Sales Yard, Rifle, Colo.
Salida Livestock Commission Co., Inc., Salida, Colo.
Trinidad Livestock Commission Co., Trinidad, Colo.
Yampa Valley Livestock Sales, Steamboat Springs, Colo.

Notice is hereby given, therefore, that the said Director, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Director, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D. C., this 6th day of February 1957.

[SEAL] DAVID M. PETTUS,
Acting Director, Livestock Division, Agricultural Marketing Service.

[F. R. Doc. 57-1022; Filed, Feb. 8, 1957; 8:51 a. m.]

Commodity Stabilization Service

PEANUTS

NOTICE OF REDELEGATION OF FINAL AUTHORITY BY THE AGRICULTURAL STABILIZATION AND CONSERVATION STATE COMMITTEES FOR ALABAMA, FLORIDA, GEORGIA AND MISSISSIPPI

The Allotment and Marketing Quota Regulations for Peanuts of the 1957 and subsequent crops (21 F. R. 9370, 9760), issued pursuant to the allotment and marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1281–1393), provide that any authority delegated to the State Agricultural Stabilization and Conservation Committee by the regulations may be redelegated by the State committee. In accordance with section 3 (a) (1) of the Administrative Procedure Act (5 U. S. C. 1002 (a)), which requires delegations of final authority to be published in the FEDERAL REGISTER, there are set out herein redelegations of authority vested in the Agricultural Stabilization and Conservation State Committees by the regulations referred to above which have been made for the 1957 crop of peanuts by such committees in the States listed. The following sets forth the sections of the regulations containing the authority being redelegated and the persons to whom the authority has been redelegated.

ALABAMA

Section 729.828—To B. L. Collins, State Administrative Officer.

FLORIDA

Sections 729.811 (p) (5), 729.818, 729.820 (a), 729.822 (a) and 729.855—To the State Administrative Officer or the person acting in such capacity.

Sections 729.817 (b) (5) and 729.828—To the State Administrative Officer or the person acting in such capacity and to District Farmer Fieldmen.

GEORGIA

Sections 729.811 (p) (5), 729.811 (ff) (5), 729.820 (a), 729.822 (a) and 729.849 (b)—To the State Administrative Officer or the person acting in such capacity and to the Program Specialist in charge of peanut allotment and marketing quota work.

Sections 729.818 and 729.828—To the State Administrative Officer or the person acting in such capacity, Program Specialists engaged in peanut allotment and marketing quota work, District Farmer Fieldmen and District Farmer Fieldmen Trainees.

Section 729.849 (c)—To the State Administrative Officer or the person acting in such capacity.

MISSISSIPPI

Sections 729.817, 729.818, 729.819, 729.820, 729.824, 729.827, 729.853, 729.855 and 729.857—

To the State Administrative Officer or the person acting in such capacity.

Sections 729.822 and 729.828—To the State Administrative Officer or the person acting in such capacity, the Program Specialist in charge of peanut allotment and marketing quota work and District Farmer Fieldmen.

(Sec. 375, 52 Stat. 66, as amended; 7 U. S. C. 1375. Interpret or apply secs. 301, 358, 359, 361–368, 372, 373, 374, 376, 388, 52 Stat. 38, 62, 63, 64, 65, 66, 68, as amended; 55 Stat. 88, 90 as amended; 66 Stat. 27; secs. 106, 112, 377, 70 Stat. 191, 195, 206; 7 U. S. C. 1301, 1358, 1359, 1361–1368, 1372, 1373, 1374, 1376, 1377, 1388)

Issued at Washington, D. C. this 5th day of February 1957.

[SEAL] CLARENCE L. MILLER,
Acting Administrator,
Commodity Stabilization Service.

[F. R. Doc. 57–1025; Filed, Feb. 8, 1957; 8:51 a. m.]

DESIGNATION OF REPRESENTATIVES OF SECRETARY OF AGRICULTURE

Pursuant to the authority vested in the Administrator of the Commodity Stabilization Service by the Secretary of Agriculture (19 F. R. 77), the Chairman and the Administrative Officer of every Agricultural Stabilization and Conservation State Committee are each hereby designated a Representative of the Secretary of Agriculture with authority to execute in the name of the United States Department of Agriculture, contracts, agreements, or other documents relating to the procurement, handling, payment, and related services for section 32 programs as authorized by program directives issued to Commodity Stabilization Service pursuant to the Memorandum of Understanding Between Agricultural Marketing Service and Commodity Stabilization Service. (See Commodity Stabilization Service Instruction 114–3.) Such authority shall be exercised with respect to commodities or functions which have been assigned to his respective Agricultural Stabilization and Conservation State Committee. The authority herein conferred may be exercised by any person who is serving in such position in an acting capacity.

Effective date: January 2, 1957.

Issued this 5th day of February 1957.

[SEAL] WALTER C. BERGER,
Administrator,
Commodity Stabilization Service.

[F. R. Doc. 57–1052; Filed, Feb. 8, 1957; 8:51 a. m.]

Commodity Stabilization Service and Commodity Credit Corporation

APPOINTMENT OF COMMODITY CREDIT CORPORATION CONTRACTING OFFICERS

Pursuant to the authority vested in the Executive Vice President, Commodity Credit Corporation, by the by-laws of the Commodity Credit Corporation, the Chairman and the Administrative Officer of every Agricultural Stabilization and Conservation State Committee are each hereby appointed a contracting officer of the Commodity Credit Corporation with authority to execute in the name of the Corporation contracts, agreements, or other documents or any amendments or supplements thereto under authorized programs of Commodity Credit Corporation and with respect to commodities or functions which shall have been assigned to his respective Agricultural Stabilization and Conservation State Committee.

The authority herein delegated shall be exercised in conformity with the by-laws, regulations, and programs of Commodity Credit Corporation and the policies adopted by the Board of Directors of the Commodity Credit Corporation. The authority herein conferred may be exercised by any person who is serving in such position in an acting capacity.

Effective date: January 2, 1957.

Issued this 5th day of February 1957.

[SEAL] WALTER C. BERGER,
Executive Vice President,
Commodity Credit Corporation.

[F. R. Doc. 57–1024; Filed, Feb. 8, 1957; 8:51 a. m.]

HAWAIIAN SUGARCANE

NOTICE OF HEARING ON PRICES AND DESIGNATION OF PRESIDING OFFICERS

Pursuant to the authority contained in subsection (c) (2) of section 301 of the Sugar Act of 1948, as amended (61 Stat. 929; 7 U. S. C. Sup. 1131), and in accordance with the rules of practice and procedure applicable to fair price proceedings (7 CFR 802.1 et seq), notice is hereby given that a public hearing will be held as follows:

At Hilo, on the Island of Hawaii, in the Auditorium of the Hilo Electric Light Company, Limited, on Kilauea Avenue, on March 26, 1957, at 9:30 a. m.

The purpose of the hearing is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining, pursuant to the provisions of section 301 (c) (2) of said act, fair and reasonable prices for the 1957 crop of Hawaiian sugarcane to be paid, under either purchase or toll agreement, by producers who process sugarcane grown by other producers and who apply for payments under the said act.

The hearing after being called to order at the time and place mentioned herein, may be continued from day to day within the discretion of the presiding officers, and may be adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing by the presiding officers.

In the interest of obtaining the best possible information, all interested persons are requested to appear at the hearing to express their views and present appropriate data in regard to the foregoing matter.

Lawrence Myers, L. C. Holm, A. A. Greenwood, and Will N. King are hereby designated as presiding officers to conduct either jointly or severally the foregoing hearing.

Issued this 6th day of February 1957.

[SEAL] THOS. H. ALLEN,
Acting Director,
Sugar Division.

[F. R. Doc. 57–1026; Filed, Feb. 8, 1957; 8:51 a. m.]

Office of the Secretary

KANSAS

DISASTER ASSISTANCE; DELINEATION OF DROUGHT AREA

Pursuant to Public Law 875, 81st Congress, the President determined on August 26, 1954, that a major disaster occasioned by drought existed in the State of Kansas.

Pursuant to the authority delegated to me by the Administrator, Federal Civil Defense Administration (18 F. R. 4609; 19 F. R. 2148, 5364), and for the purposes of section 2 (d) of Public Law 38, 81st Congress, as amended by Public Law 115, 83d Congress, and section 301 of Public Law 480, 83d Congress, the following area was determined on January 31, 1957, to be affected by the above-mentioned major disaster:

KANSAS

Nine townships in Pottawatomie County: Green, Pottawatomie, Union, Center, St. Clare, Emmett, Louisville, and those parts of Blue and St. George Townships north of the new Highway 24.

Done at Washington, D. C., this 6th day of February 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57–1027; Filed, Feb. 8, 1957; 8:51 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[61418]

FLORIDA

NOTICE OF FILING OF PLAT OF SURVEY

FEBRUARY 5, 1957.

1. Notice is given that the plat original survey of the following described lands accepted August 18, 1954 will be officially filed in this office, effective at 10:00 a. m., on the 35th day after the date of this notice:

TALLAHASSEE MERIDIAN, FLORIDA

T. 42 S., R. 21 E.,
Sec. 23, Lot 4, containing 2.05 acres;
Sec. 25, Lot 1, containing 2.34 acres;
Sec. 34, Lot 1, containing 6.83 acres; Lot 2, containing 1.17 acres;
Sec. 35, Lot 1, containing 0.31 acres; Lot 2, containing 7.54 acres.

2. This plat represents the survey of islands in the waters of Charlotte Harbor which were not included in the original survey of the township.

3. By Executive Order No. 958 of October 23, 1908, all unsurveyed islands in above-mentioned township were with-

drawn for the Island Bay Reservation, name changed to Island Bay National Wildlife Refuge by Proclamation No. 2416 of July 27, 1940.

4. Anyone having a valid settlement or right to any of the lands initiated prior to the date of withdrawal of the land should assert the same within three months from the date on which the plat is officially filed by filing an application under appropriate public land law setting forth all facts relevant thereto.

5. All inquiries relating to the land should be addressed to the Acting Manager, Eastern States Land Office, Bureau of Land Management, Department of the Interior, Washington 25, D. C.

H. K. SCHOLL,
Acting Manager.

[F. R. Doc. 57-997; Filed, Feb. 8, 1957; 8:46 a. m.]

Office of the Secretary

REID BRAZELL

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

FEBRUARY 5, 1957.

Pursuant to section 302 (a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER:

Name of appointee: Reid Brazell.

Name of employing agency: Department of the Interior, Office of Oil and Gas.

Title of the appointee's position: Consultant.

Name of the appointee's private employer: None.

Date of appointment: January 7, 1957.

The statement of "financial interests" for the above appointee is set forth below.

THOMAS H. TELLIER,
Personnel Officer.

Statement of Financial Interest

In accordance with the requirements of section 302 (b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on January 7, 1957, as Consultant, Office of Oil and Gas, United States Department of the Interior, an officer or director.

Leonard Refineries, Inc.
Leonard Oil, Inc.
Meridian Drilling Co.
WFYC, Inc.
First State Bank of Alma, Mich.
West Park Development, Inc.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests.

Leonard Refineries, Inc.
Leonard Oil, Inc.
Meridian Drilling Co.
WFYC, Inc.
First State Bank of Alma, Mich.
West Park Development, Inc.
Hiawatha Oil and Gas Co.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment.

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment.

None.

REID BRAZELL.

JANUARY 24, 1957.

[F. R. Doc. 57-998; Filed, Feb. 8, 1957; 8:46 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

[Docket No. M-77]

PRUDENTIAL STEAMSHIP CORP. ET AL.

NOTICE OF HEARING ON APPLICATIONS TO BAREBOAT CHARTER DRY-CARGO VESSELS

Notice is hereby given that a public hearing will be held pursuant to section 5 (e) of the Merchant Ship Sales Act, 1946, as amended (Pub. Law 591, 81st Cong., 50 U. S. C. App. 1738), on February 25, 1957, at 9:30 a. m., in the offices of the Federal Maritime Board in the New General Accounting Office Building, Fifth and G Streets NW., Washington, D. C., upon the applications of:

(1) Prudential Steamship Corporation to bareboat charter ten (10) Liberty-type vessels to be used in trade between the United States and Japan and other foreign countries, principally as bulk carriers of iron and steel scrap;

(2) Polarus Steamship Co., Inc., to bareboat charter ten (10) Liberty-type vessels to be used in trade from the United States to Japan and other foreign destinations principally in the transportation of scrap iron and pig iron and related steel products;

(3) West Coast Steamship Company to bareboat charter five (5) Liberty-type vessels for the carriage of government-sponsored bulk cargoes of grain and/or coal from U. S. ports to Japan, Korea, and Formosa, together with such other cargoes and between such other ports as may be approved by the Maritime Administrator; and

(4) Paroh Steamship Company to bareboat charter two (2) Liberty-type vessels for the carriage of government-sponsored bulk cargoes from U. S. Atlantic and Gulf ports to Continental, Mediterranean, and Far Eastern ports, and from U. S. Pacific ports to Korea, Japan, India, and Pakistan, and whereever government-sponsored foreign aid cargoes are destined.

The purpose of the hearing is to receive evidence with respect to whether the services for which such vessels are proposed to be chartered are required in the public interest and are not adequately served, and with respect to the availability of privately owned American-flag vessels for charter on reasonable conditions and at reasonable rates for use in such services. Evidence will be received with respect to any restrictions or conditions that may be necessary or appropriate to protect the public interest in respect of such charters as may be granted and to protect privately owned vessels against competition from vessels chartered as a result of this proceeding.

All persons having an interest in the applications will be given an opportunity to be heard if present, and applications from qualified applicants to bareboat charter additional vessels for offshore employment which are received by the close of business on February 21, 1957, will be considered in the proceedings.

An Examiner from the Hearing Examiner's Office will preside at the hearing, and oral argument may be had at the conclusion of the receipt of evidence in lieu of briefs. An initial decision will be issued. The time for filing exceptions thereto is hereby restricted to seven (7) days, and no replies to exceptions will be received.

By order of the Federal Maritime Board.

Dated: February 7, 1957.

JAMES L. PIMPER,
Secretary.

[F. R. Doc. 57-1029; Filed, Feb. 8, 1957; 8:52 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

LEARNER EMPLOYMENT CERTIFICATES

ISSUANCE TO VARIOUS INDUSTRIES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), and Part 522 of the regulations issued thereunder (29 CFR Part 522), special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates applicable under section 6 of the act have been issued to the firms listed below. The employment of learners under these certificates is limited to the terms and conditions therein contained and is subject to the provisions of Part 522. The effective and expiration dates, occupations, wage rates, number or proportion of learners and learning periods for certificates issued under general learner regulations (§§ 522.1 to 522.12) are as indicated below; conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.20 to 522.24, as amended March 1, 1956, 21 F. R. 1349).

The following learner certificates were issued for normal labor turnover purposes and, except as otherwise indicated below, 10 percent of the total number of factory production workers were authorized for employment.

American Apparel Co., Inc., Roodhouse, Ill.; effective 1-16-57 to 1-15-58; five learners (Women's, misses' and juniors' dresses).

American Apparel Co., Inc., White Hall, Ill.; effective 1-16-57 to 1-15-58 (Women's, misses', and juniors' dresses).

Blue Bell, Inc., 626 South Elm Street, West Lee and Fuller Streets, Greensboro, N. C.; effective 1-21-57 to 1-20-58 (misses' and girls' shorts).

Calloway Manufacturing Co., Second and Poplar Streets, Murray, Ky.; effective 1-21-57 to 1-20-58 (men's work trousers).

Cambria Dress Manufacturing Co., Inc., Corner of Walter and Johnson Streets; effective 1-14-57 to 1-13-58; 10 learners (dresses).

Campus Shirt Co., 130 East South Street, Barnesville, Ohio; effective 1-23-57 to 1-22-58 (men's and boys' sport shirts).

Carole Industries, Inc., Rutherfordton, N. C.; effective 1-28-57 to 1-27-58 (ladies' and misses' woven pajamas).

Centre Manufacturing Co., Inc., Centre, Ala.; effective 1-16-57 to 1-15-58 (men's and boys' apparel).

Chickadee Dress Co., Inc., 835 East Fourth Street, Bethlehem, Pa.; effective 1-18-57 to 1-17-58; 10 learners (ladies' dresses).

City Shirt Co., 19-21 West Vine Street, Mahanoy City, Pa.; effective 2-1-57 to 1-31-58 (sport and uniform shirts).

Elsing Manufacturing Co., South on Highway 69, McAlester, Okla.; effective 1-17-57 to 1-16-58; five learners. Learners may not be employed at special minimum wages in the production of separate skirts (women's blouses, dresses).

Hanover Shirt Co., Inc., Ashland, Va.; effective 1-27-57 to 1-26-58 (men's cotton flannel sport shirts).

Hebron Pants Factory, Hebron, Md.; effective 2-4-57 to 2-3-58 (cotton work pants).

Huggins Garment Co., Inc., Donalds, S. C.; effective 1-9-57 to 1-28-58 (men's sport and utility shirts).

Morgan Shirt Co., Inc., Morgantown, W. Va.; effective 1-17-57 to 1-16-58 (ladies' mantailored blouses).

Philip Rothenberg & Co., Inc., Shellenberger Plant, McAlisterville, Pa.; effective 1-18-57 to 1-17-58 (dress and sport shirts).

Tennessee Overall Co., 401 North Atlantic Street, Tullahoma, Tenn.; effective 1-23-57 to 1-22-58; 10 learners (men's cotton work pants).

True Loom Manufacturing Co., Inc., Lafayette, Tenn.; effective 2-15-57 to 2-14-58 (men's sport shirts).

Willards Shirt Co., Willards, Md.; effective 1-29-57 to 1-28-58 (cotton work shirts).

The following learner certificates were issued for plant expansion purposes. The number of learners authorized is indicated:

Centre Manufacturing Co., Inc., Centre, Ala.; effective 1-16-57 to 7-15-57; 75 learners (men's and boys' apparel).

Harriet Shirt Co., Inc., Exmore, Va.; effective 1-17-57 to 7-16-57; 15 learners (boys' shirts and pajamas).

International Latex Corp., Manchester, Ga.; effective 1-18-57 to 4-14-57; 130 learners (infants' wear and brassieres).

Glove Industry Learner Regulations (29 CFR 522.60 to 522.65, as amended March 1, 1956, 21 F. R. 581).

Knoxville Glove Co., 819 McGhee Street., Knoxville, Tenn.; effective 1-15-57 to 1-14-58; 10 percent of the total number of machine stitchers, for normal labor turnover purposes (cotton, Jersey and leather-palm work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.40 to 522.43, as amended March 1, 1956, 21 F. R. 629).

Acme Hosiery Dye Works, Inc., Pulaski, Va.; effective 1-25-57 to 1-24-58; 5 percent of total number of factory production workers for normal labor turnover purposes (full fashioned).

Durham Hosiery Mills, Plant No. 14, 109 South Corcoran Street, Durham, N. C.; effective 1-25-57 to 1-24-58; 5 percent of the total number of factory production workers for normal labor turnover purposes (full fashioned).

Koury Hosiery Mills, Inc., 1247 South Park Avenue, Burlington, N. C.; effective 1-18-57 to 1-17-58; five learners for normal labor turnover purposes (seamless).

Parkdale Hosiery Mill, Catawba, N. C.; effective 1-18-57 to 1-17-58; five learners for normal labor turnover purposes (seamless).

Virginia Maid Hosiery Mills, Inc., Pulaski, Va.; effective 1-25-57 to 1-24-58; 5 percent of total number of factory production workers for normal labor turnover purposes (full fashioned).

Knitted Wear Industry Learner Regulations (29 CFR 522.30 to 522.35, as amended March 1, 1956, 21 F. R. 581).

Reverie Lingerie, Inc., Hillsboro, N. C.; effective 2-1-57 to 1-31-58; five learners for normal labor turnover purposes (ladies' and children's nylon and rayon underwear).

Shadowline, Inc.; Morganton, N. C.; effective 1-15-57 to 1-14-58; five percent of total number of factory production workers for normal labor turnover purposes (panties, pettiskirts, gowns, etc).

Shoe Industry Learner Regulations (29 CFR 522.50 to 522.55, as amended March 1, 1956, 21 F. R. 1195).

B. E. Cole Co., Beal & Lynn St., Norway, Maine; effective 1-18-57 to 1-17-58; 10 percent of total number of factory production workers for normal labor turnover purposes (women's novelty shoes).

Columbia Novelty Slipper Co., Hazleton, Pa.; effective 1-17-57 to 1-16-58; 10 percent of total number of factory production workers for normal labor turnover purposes.

Francine Shoe Co., Beal Street, Norway, Maine; effective 1-18-57 to 1-17-58; 10 percent of total number of factory production workers for normal labor turnover.

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.12, as amended February 28, 1955, 20 F. R. 645).

Palm Beach Co., Blackville, S. C., effective 1-21-57 to 1-20-58; 10 percent of the total number of factory production workers for normal labor turnover purposes (men's summer clothing and slacks).

Regulations Applicable to the Employment of Student-Workers (29 CFR 527.1 to 527.9, October 14, 1955, 20 F. R. 7737).

Newbury Park Academy, Newbury Park, Calif.; effective 1-14-57 to 8-31-57; 10 student workers to be employed in the broom industry, in the occupations of broom maker, sorter, winder, stitcher, and related skilled and semiskilled occupations; each for a learning period of 360 hours at rates of 80 cents an hour for the first 180 hours and 85 cents an hour for the remaining 180 hours.

Each learner certificate has been issued upon the employer's representation that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn in the manner provided in Part 528 and as indicated in the certificates. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of Part 522.

Each student-worker certificate has been issued upon the employer's representation that the employment of the student-workers at subminimum rates is necessary to prevent curtailment of opportunities for employment.

Signed at Washington, D. C., this 25th day of January 1957.

MILTON BROOKE,
Authorized Representative of the Administrator.

[F. R. Doc. 57-999; Filed, Feb. 8, 1957; 8:47 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-10326, etc.]

SUNRAY-MIDCONTINENT OIL CO. ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

FEBRUARY 4, 1957.

In the matters of Sunray-Midcontinent Oil Company, Docket Nos. G-10326, G-10370, G-10532; Phillips Petroleum Company, Docket No. G-10329; Southland Royalty Company, Docket No. G-10330; Austral Oil Exploration Company, Inc., Operator, Docket No. G-10338; Ralph Sutton, et al., Docket No. G-10340; Colorado Oil and Gas Corporation, Docket Nos. G-10348; G-10545; Texas Gulf Producing Company, Docket No. G-10355; W. E. Bakke, Docket No. G-10356; United States Smelting Refining and Mining Company, Docket No. G-10362; P. R. Rutherford, Operator, et al., Docket No. G-10363; Panola Trading Company, Inc., Docket No. G-10365; J. C. Trahan, Drilling Contractor, Inc., Docket No. G-10372; Harold E. Mott, Agent, et al., Docket No. G-10374; Anderson-Prichard Oil Corporation, Docket Nos. G-10384, G-10519, G-10624; C. H. Lyons, Jr., et al., Docket No. G-10385; Walker Gas Company, Docket No. G-10387; Champlin Refining Company, Docket No. G-10389; Smith and Turner, A Partnership, Docket No. G-10391; Buffalo Oil Company, Docket No. G-10397; Jake L. Hamon, Docket No. G-10401; Shawver-Armour, Inc., Operator, et al., Docket No. G-10404; Alton Coats and Olin Gas Transmission Corporation, Docket No. G-10408; Moran and Company, Docket No. G-10410; James Donoghue, Operator, et al., Docket No. G-10411; Gulf Natural Gas Corporation, Operator, Docket No. G-10415; United Carbon Company, Inc. (Maryland), Docket No. G-10416; Bel Oil Corporation, Docket No. G-10417; Greenbrier Oil Company, Operator, et al., Docket No. G-10419; Amerada Petroleum Corporation, Docket Nos. G-10428, G-10432, G-10433, G-10505; West Virginia Production Company, Docket Nos. G-10429, G-10430; H. F. Sears, Docket No. G-10431; Edgar W. White, Docket No. G-10444; Midstates Oil Corporation, Docket Nos. G-10445, G-10468; Schermerhorn Oil Corporation, Kenwood Oil Company and J. Hiram Moore, Docket No. G-10448; Sinclair Oil and Gas Company, et al., Docket No. G-10456; Howard Drew, Docket No. G-10457; Schermerhorn Oil Corporation and Kenwood Oil Company, Docket No. G-10459; The Chicago Corporation, Operator, et al., Docket No. G-10461; Paul F. Barnhart, Docket No. G-10462; Paul F. Barnhart, et al., Docket No. G-10463; Petroleum, Inc., Operator,

Docket No. G–10474; Delhi-Taylor Oil Corporation, Docket No. G–10475; Shell Oil Company, Docket Nos. G–10477, G–10479; United Producing Company, Inc., Docket Nos. G–10478, G–10523; Sun Oil Company (Gulf Coast Division), Docket No. G–10480; Honolulu Oil Corporation, Docket No. G–10484; Trans-Tex Drilling Company, Docket No. G–10485; Weldon H. Littell, Docket No. G–10487; Bachus Oil Company, et al., Docket No. G–10488; C. B. Webster, Docket No. G–10489; Makin Drilling Company, Docket Nos. G–10491, G–10644; Appalachian Sulphides, Inc., Docket No. G–10495; Sinclair Oil and Gas Company, Docket Nos. G–10502, G–10567; The Atlantic Refining Company, Docket No. G–10503; Phillips Petroleum Company, Operator, Docket No. G–10504; A. J. Kirkpatrick Gas Company, George W. Miller, et al., Docket No. G–10508; Monsanto Chemical Company, Docket No. G–10509; Harper Oil Company, Operator, Docket No. G–10514; Apache Oil Corporation, Docket No. G–10516; R. Olsen, Docket No. G–10518; General Petroleum Corporation, Docket No. G–10525; The Superior Oil Company, Docket No. G–10526; J. Paul Ratliff, Jr., Operator, Docket No. G–10534; Standard Oil Company of Texas, Docket No. G–10536; J. R. Meeker, Docket No. G–10541; Tidewater Oil Company, Docket No. G–10542; Kilroy Company of Texas, Inc., Operator, et al., Docket No. G–10543; The Texas Company, Docket No. G–10547; Trigood Oil Company, Docket No. G–10560; Northeast Blanco Development Corporation and K. E. McAfee, Docket No. G–10682; Excelsior Oil Corporation, Docket Nos. G–10932, G–10933; C. A. Brian, Operator, Docket No. G–10990; Continental Oil Company, Docket No. G–11518.

Each of the above applicants has filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing applicants to render services as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in their respective applications which are on file with the Commission and open for public inspection.

Applicants produce and sell or propose to sell natural gas for transportation in interstate commerce for resale as indicated below:

Docket No. G–; Location of Field; and Buyer

10326; Carthage Field, Panola County, Texas; Arkansas Louisiana Gas Company.

10329; Leases comprising approximately 5,884.39 acres in the Stiles Field, Reagan County, Texas; Permian Basin Pipe Line Company.

10330; Stiles Field, Reagan County, Texas; Phillips Petroleum Company.

10338; Maxie Field, Acadia Parish, Louisiana; Transcontinental Gas Pipe Line Corporation.

10340; Acreage in Union District, Ritchie County, West Virginia; Carnegie Natural Gas Company.

10348; Keyes Field, Cimarron County, Oklahoma; Colorado Interstate Gas Company.

10355; Clear Creek Field, Beauregard and Allen Parishes, Louisiana; Trunkline Gas Company.

10356; Benedum-Spraberry Field, Upton County, Texas; El Paso Natural Gas Company.

10362; Ignacio Field, La Plata County, Colorado; El Paso Natural Gas Company.

10363; Headlee Field, Ector and Midland Counties, Texas; El Paso Natural Gas Company.

10365; Waskom Field, Harrison County, Texas; Arkansas Louisiana Gas Company.

10370; Greenwood (Sparks) Field, Stanton County, Kansas; Colorado Interstate Gas Company.

10372; South Hallsville Field, Harrison County, Texas; Texas Eastern Transmission Corporation.

10374; Vannoy Field, Gilmer County, West Virginia; Equitable Gas Company.

10384; 160 acres, Windham "B" Lease, Upton County, Texas; El Paso Natural Gas Company.

10385; South Hallsville Field, Harrison County, Texas; Arkansas Louisiana Gas Company.

10387; Acreage in Oceana District, Wyoming County, West Virginia; Hope Natural Gas Company.

10389; Medicine Lodge Field, Barber County, Kansas; Cities Service Gas Company.

10391; Carthage Field, Panola County, Texas; United Gas Pipe Line Company.

10397; Eumont Field, Lea County, New Mexico; El Paso Natural Gas Company.

10401; Flores Field Area, Starr County, Texas; Tennessee Gas Transmission Company.

10404; Brumley Field, Sedgwick County, Kansas; Cities Service Gas Company.

10408; Bethany Field, Panola County, Texas; Tennessee Gas Transmission Company.

10410; Indian Fork Court House District, Lewis County, West Virginia; Equitable Gas Company.

10411; Certain leases in Meade County, Kansas; Panhandle Eastern Pipe Line Company.

10415; Pine Island Field, Caddo Parish, Louisiana; Arkansas Louisiana Gas Company.

10416; Northwest Eva Field, Texas County, Oklahoma; Colorado Interstate Gas Company.

10417; Clear Creek Field, Beauregard and Allen Parishes, Louisiana; Trunkline Gas Company.

10419; Drinkard Field, Lea County, New Mexico; El Paso Natural Gas Company.

10428; Hugoton Field, Kearny County, Kansas; Colorado Interstate Gas Company.

10429; Acreage in Sheridan District, Calhoun County, West Virginia; Hope Natural Gas Company.

10430; Acreage in Sherman District, Calhoun County, West Virginia; Hope Natural Gas Company.

10431; West Panhandle Field, Hutchinson County, Texas; Colorado Interstate Gas Company.

10432; 5,120 acres in Jicarilla Apache Area, Rio Arriba County, New Mexico; El Paso Natural Gas Company.

10433; 14,400 acres in Jicarilla Apache Area, Rio Arriba County, New Mexico; El Paso Natural Gas Company.

10444; Greenwood Field, Morton County, Kansas; Colorado Interstate Gas Company.

10445; Elysian Field Area, Harrison and Panola Counties, Texas; United Gas Pipe Line Company.

10448; Eumont Field, Lea County, New Mexico; El Paso Natural Gas Company.

10456; East Call Field, Newton County, Texas; Texas Eastern Transmission Corporation.

10457; Greenwood Field, Morton County, Kansas; Colorado Interstate Gas Company.

10459; Eumont Field, Lea County, New Mexico; El Paso Natural Gas Company.

10461; Carthage Field, Panola County, Texas; Tennessee Gas Transmission Company.

10462, 10463; Spraberry Trend Area, Upton and Reagan Counties, Texas; El Paso Natural Gas Company.

10468; Bethany-Longstreet Area, Caddo and De Soto Parishes, Louisiana; Texas Eastern Transmission Corporation.

10474; Hugoton Gas Field, Finney County, Kansas; Northern Natural Gas Company.

10475; San Ramon Field, Hidalgo County, Texas; Tennessee Gas Transmission Company.

10477; North Government Wells Field, Duval County, Texas; Tennessee Gas Transmission Company.

10478; Bernstein-Hitchland Field, Hansford County, Texas; Panhandle Eastern Pipe Line Company.

10479; La Copita Field, Starr County, Texas; Tennessee Gas Transmission Company.

10480; South Crowley Field, Acadia Parish, Louisiana; Tennessee Gas Transmission Company.

10484; Texas Hugoton Field, Hansford and Ochiltree Counties, Texas; Northern Natural Gas Company.

10485; Darley Field, Bienville and Claiborne Parishes, Louisiana; Arkansas Louisiana Gas Company.

10487; Greenwood Field, Morton County, Kansas; Colorado Interstate Gas Company.

10488; Driftwood Pool, Barber County, Kansas; Cities Service Gas Company.

10489; Clear Creek Field, Beauregard Parish, Louisiana; Trunkline Gas Company.

10491; Eumont Field, Lea County, New Mexico; El Paso Natural Gas Company.

10495; Piceance Creek Unit Area, Rio Blanco County, Colorado; Pacific Northwest Pipeline Corporation.

10502; Divide Field, Logan County, Colorado; Kansas-Nebraska Natural Gas Company, Inc.

10503; Eumont Field, Lea County, New Mexico; Warren Petroleum Corporation.

10504; Lewisburg Field, Acadia and St. Landry Parishes, Louisiana; American Louisiana Pipe Line Company.

10505; Carthage Field, Gregg and Rusk Counties, Texas; Texas Eastern Transmission Corporation.

10508; Stewarts Creek, Gilmore County, West Virginia; Equitable Gas Company.

10509; North Ruston Field, Lincoln Parish, Louisiana; Arkansas Louisiana Gas Company.

10514; Drinkard Field, Lea County, New Mexico; El Paso Natural Gas Company.

10516; Acreage in Kay County, Oklahoma; Consolidated Gas Utilities Corporation.

10518; Crosby-Devonian Pool, Lea County, New Mexico; El Paso Natural Gas Company.

10519; Langlie-Mattix Field, Lea County, New Mexico; El Paso Natural Gas Company.

10523; Greenwood (Sparks) Field, Stanton County, Kansas; Colorado Interstate Gas Company.

10525; Hogsback Unit Area, Sublette and Lincoln Counties, Wyoming; Pacific Northwest Pipeline Corporation.

10526; Herrera Field, Nueces County, Texas; Tennessee Gas Transmission Company.

10532; Leslie Field, Meade County, Kansas; West Beaver Panhandle Field, Beaver County, Oklahoma; Panhandle Eastern Pipe Line Company.

10534; Blocker Field, Harrison County, Texas; Arkansas Louisiana Gas Company.

10536; Fusselman Field, Pecos County, Texas; El Paso Natural Gas Company.

10541; Clayton Field, Live Oak County, Texas; Texas Eastern Transmission Corporation.

10542; West George West Field, Live Oak County, Texas; Texas Eastern Transmission Corporation.

10543; Aldine Field, Harris County, Texas; Texas Eastern Transmission Corporation.

10545; Greenwood Field, Morton County, Kansas; Colorado Interstate Gas Company.

10547; Piedre Lumbre Field, Duval County, Texas; Tennessee Gas Transmission Company.

10560; Divide Field, Logan County, Colorado; Kansas-Nebraska Natural Gas Company, Inc.

10567; North Johnson Hill Field, Logan County, Colorado; Kansas-Nebraska Natural Gas Company, Inc.

10624; 320 acres, R. S. Windham "A" Lease, and 160 acres, Windham "B" Lease, Upton County, Texas; El Paso Natural Gas Company.

10644; Eumont Field, Lea County, New Mexico; El Paso Natural Gas Company.

10682; Northeast Blanco Unit, San Juan and Rio Arriba Counties, New Mexico; El Paso Natural Gas Company.

10932, 10933; Atwood East and Coyote Fields, Logan County, Colorado; Kansas-Nebraska Natural Gas Company, Inc.

10990; Bethany Field, Panola and Harrison Counties, Texas; United Gas Pipe Line Company.

11518; Slick-Wilcox Field, De Witt and Goliad Counties, Texas; United Gas Pipe Line Company.

These matters should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on March 5, 1957, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 21, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made. Under the procedure herein provided for, unless otherwise advised it will be unnecessary for applicants to appear or be represented at the hearing.

[SEAL] J. H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-1001; Filed, Feb. 8, 1957; 8:47 a. m.]

[Docket Nos. G-6511, G-7735]

RAVENCLIFFS DEVELOPMENT CO. AND H. E. SCHWARTZ, ET AL.

NOTICE OF APPLICATIONS AND DATE OF HEARING

FEBRUARY 5, 1957.

Take notice that Ravencliffs Development Company and H. E. Schwartz, et al.[1] (Applicants) filed on November 29, 1954, and December 2, 1954, respectively, applications for certificates of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing Applicants to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the applications which are on file with the Commission and open for public inspection.

Ravencliffs Development Company produces natural gas from leases in the Slab Fork and Oceana Districts, Wyoming County, and Slab Fork District, Raleigh County, West Virginia, which it sells to Amere Gas Utilities Company for transportation in interstate commerce for resale.

H. E. Schwartz, et al., produces natural gas from the East Panhandle Field, Gray County, Texas, which they sell to Phillips Petroleum Company for transportation in interstate commerce for resale.

These matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on March 6, 1957, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised it will not be necessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before February 21, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL] J. H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-1002; Filed, Feb. 8, 1957; 8:47 a. m.]

[Docket No. G-11882]

AMERADA PETROLEUM CORP.

ORDER SUSPENDING PROPOSED CHANGE IN RATES

Amerada Petroleum Corporation (Amerada), on January 10, 1957, tendered for filing a proposed change in its presently effective rate schedule for a sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change dated January 7, 1957.

Purchaser: Texas Gas Transmission Corporation.

Rate schedule designation: Supplement No. 4 to Amerada's FPC Gas Rate Schedule No. 9.

Effective date:[1] February 15, 1957.

Amerada's proposed rate change is based on a favored-nations clause in its contract with Texas Gas which, by its terms, will be operative on the date on which Union Oil and Gas Corporation of Louisiana commences collection of increased rates under its contract with Texas Gas (see order issued December 7, 1956, in docket No. G-11563 which suspends Union's proposed increase from January 1 to February 15, 1957).

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the said proposed increased rate and charge, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations thereunder (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed increased rate and charge; and, pending such hearing and decision thereon, the above-designated supplement be and it is hereby suspended and the use thereof deferred until July 15, 1957, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: February 5, 1957.

By the Commission.

[SEAL] J. H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-1003; Filed, Feb. 8, 1957; 8:48 a. m.]

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[1] The application in Docket No. G-7735 states that H. E. Schwartz, Operator, is filing for himself and D. E. Williams, Jim Tripplehorn and A. D. McNamara.

[1] The stated effective date is the first day after expiration of the required thirty days' notice, or the effective date proposed by Amerada, if later.

[Docket No. G-11883]

AMERADA PETROLEUM CORP.

ORDER SUSPENDING PROPOSED CHANGES IN RATES

Amerada Petroleum Corporation (Amerada), on January 7, 1957, tendered for filing several proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of change dated January 2, 3 and 4, 1957.
Purchaser: Texas Gas Transmission Corporation.
Rate schedule designations: Supplement No. 5 to Amerada's FPC Gas Rate Schedule No. 11; Supplement No. 3 to Amerada's FPC Gas Rate Schedule No. 12; Supplement No. 5 to Amerada's FPC Gas Rate Schedule No. 13.
Effective date: [1] February 6, 1957.

Amerada's proposed rate changes are based on favored-nations clauses in its contracts with Texas Gas which, by their terms, have purportedly become operative by the rate for a new sale to Texas Gas by Gulf Refining Company in the South Bell City Field, Calcasieu Parish, Louisiana.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the said proposed increased rates and charges, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations thereunder (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed increased rates and charges; and, pending such hearing and decision thereon, the above-designated supplements be and they are each hereby suspended and the use thereof deferred until July 6, 1957, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: February 5, 1957.

By the Commission.

[SEAL] J. H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-1004; Filed, Feb. 8, 1957; 8:48 a. m.]

[1] The stated effective date is the first day after expiration of the required thirty days' notice, or the effective date proposed by Amerada, if later.

[Docket No. G-11884]

SOHIO PETROLEUM CO.

ORDER SUSPENDING PROPOSED CHANGES IN RATES

Sohio Petroleum Company (Sohio), on January 7, 1957, tendered for filing several proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of change, undated.
Purchaser: Texas Gas Transmission Corporation.
Rate schedule designations: Supplement No. 2 to Sohio's FPC Gas Rate Schedule No. 24; Supplement No. 2 to Sohio's FPC Gas Rate Schedule No. 14; Supplement No. 3 to Sohio's FPC Gas Rate Schedule No. 16; Supplement No. 2 to Sohio's FPC Gas Rate Schedule No. 21.
Effective date: [1] February 6, 1957.

Sohio's proposed rate changes are based on favored-nations clauses in its contracts with Texas Gas which, by their terms, have purportedly become operative by the rate for a new sale to Texas Gas by Gulf Refining Company in the South Bell City Field, Calcasieu Parish, Louisiana.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the said proposed increased rates and charges, and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations thereunder (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed increased rates and charges; and, pending such hearing and decision thereon, the above-designated supplements be and they are each hereby suspended and the use thereof deferred until July 6, 1957, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: February 5, 1957.

By the Commission.

[SEAL] J. H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-1005; Filed, Feb. 8, 1957; 8:48 a. m.]

[1] The stated effective date is the first day after expiration of the required thirty days' notice, or the effective date proposed by Sohio, if later.

OFFICE OF DEFENSE MOBILIZATION

J. R. KILLIAN, JR.

APPOINTEE'S STATEMENT OF CHANGES IN BUSINESS INTERESTS

The following statement lists the names of concerns required by subsection 710 (b) (6) of the Defense Production Act of 1950, as amended.

Additions: I now own stock in the British Petroleum Company Limited.

This amends statement previously published in the FEDERAL REGISTER, August 16, 1956 (21 F. R. 6152).

Dated: January 29, 1957.

J. R. KILLIAN, Jr.

[F. R. Doc. 57-1011; Filed, Feb. 8, 1957; 8:49 a. m.]

DETLEV W. BRONK

APPOINTEE'S STATEMENT OF CHANGES IN BUSINESS INTERESTS

The following statement lists the names of concerns required by subsection 710 (b) (6) of the Defense Production Act of 1950, as amended.

Addition: Protein Foundation, trustee.

This amends statement previously published in the FEDERAL REGISTER, August 1, 1956 (21 F. R. 5948).

Dated: January 29, 1957.

DETLEV W. BRONK.

[F. R. Doc. 57-1012; Filed, Feb. 8, 1957; 8:49 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 54-169]

MARKET STREET RAILWAY CO.

ORDER RELEASING JURISDICTION OVER FEES AND EXPENSES FOR SERVICES AND OVER FINAL DISTRIBUTION

FEBRUARY 5, 1957.

By order dated May 13, 1953 (Holding Company Act Release No. 11906) the

Commission approved Step II, as amended, of a plan of liquidation, pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935 ("act"), filed by Market Street Railway Company ("Market Street"), formerly a non-utility subsidiary of Standard Gas and Electric Company, a registered holding company. Step II, as amended, among other things, proposed that Market Street would, after satisfying its liabilities, distribute its remaining assets on a pro rata basis to the holders of its then outstanding prior preference stock. In the order of May 13, 1953, the Commission reserved jurisdiction with respect to (a) any future distribution to be made by Market Street to its prior preference stockholders and (b) the payment of any fees and expenses.

Market Street has advised the Commission that there are no outstanding claims against it other than those that are current and after making provision for the satisfaction of its current liabilities and for the payment of the sum of $500 for services performed by Edward E. Laufer as an officer of Market Street and the sum of $2,513 for legal services performed and to be performed through final dissolution of the corporation by Douglass Newman, there remains $40,664.75 for final distribution to stockholders holding 116,185 shares or at the rate of 35¢ per share. Such distribution will be payable from cash on hand.

The Commission having considered (a) the proposed payments of fees and expenses for services rendered and to be rendered and finding that such amounts are reasonable and for necessary services and (b) the proposed final distribution to stockholders in the light of the applicable standards of the act and deeming it appropriate that the jurisdiction heretofore reserved with respect to such distribution should be released:

It is ordered, Pursuant to section 11 (e) and the other applicable sections of the act, that the transactions proposed herein be, and the same hereby are, approved and that the jurisdiction heretofore reserved with respect thereto be, and the same hereby is, released.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-1008; Filed, Feb. 8, 1957; 8:48 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FEBRUARY 6, 1957.

FSA No. 33232: *Substituted service—Motor-Rail-Motor, Pennsylvania Railroad.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent, for named motor carriers and The Pennsylvania Railroad Company. Rates on various commodities loaded in highway motor-truck trailers and transported on railroad flat cars between Chicago and East St. Louis, Ill., Cincinnati and Cleveland, Ohio, Detroit, Mich., Indianapolis, Ind., and Louisville, Ky., on one hand, and Baltimore, Md., on the other; also between Cincinnati, Detroit, and Louisville, on one hand, and Kearny, N. J., and Philadelphia, Pa., on the other.

Grounds for relief: Motor-truck competition.

Tariff: The Eastern Central Motor Carriers Association, Inc., tariff I. C. C. No. 14.

FSA No. 33233: *Fibreboard boxes—Omaha, Nebr., to Minnesota.* Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on boxes, fibreboard, carloads, as more fully described in the application, from Omaha, Nebr., to Albert Lea, Mankato, Miloma, and Waterville, Minn.,

Grounds for relief: Circuitous routes.

Tariff: Supplement 78 to Agent Prueter's tariff I. C. C. A-4038.

FSA No. 33234: *Caustic soda to points in Tennessee territory.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on liquid caustic soda, tank-car loads from Baton Rouge and North Baton Rouge, La., to Boyce, Calhoun, Chattanooga, Lowland and North Chattanooga, Tenn., from Calvert, Ky., Memphis, Tenn., and McIntosh, Ala., to Lowland, Tenn.

Grounds for relief: Market competition and circuitous routes.

Tariffs: Supplement 187 to Agent Spaninger's I. C. C. 1295. Supplement 31 to Agent Spaninger's I. C. C. 1526. Supplement 33 to Agent Spaninger's I. C. C. 1548.

FSA No. 33235: *Pig iron—South to Kansas and Missouri.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on pig iron and related articles, carloads from specified producing points in Alabama and Tennessee to Kansas City, Clinton, Harrisonville, and Springfield, Mo., and Kansas City, Kans.

Grounds for relief: Circuitous routes.

Tariff: Supplement 78 to Agent C. A. Spaninger's I. C. C. 1420.

FSA No. 33236: *Salt—Jefferson Island, La., to Anniston, Ala.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on mine run salt, carloads from Jefferson Island, La., to Annison, Ala.

Grounds for relief: Circuitous routes.

Tariff: Supplement 85 to Agent Kratzmeir's I. C. C. 3903.

FSA No. 33237: *Paper winding cores—From and to western trunk-line territory.* Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on cores, printing paper winding, old and used, iron or steel, carloads, as more fully described in the application, from specified points in Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming to specified points in Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin, also Manitoba and Ontario, Canada.

Grounds for relief: Carrier competition and circuitous routes.

Tariffs: Supplement 42 to Agent Prueter's I. C. C. A-4082. Supplement 13 to Agent Prueter's I. C. C. A-4094.

FSA No. 33238: *Cresylic acid—Oklahoma and Texas to Roxana, Ill.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on petroleum cresylic acid, tank-car loads, from Tulsa, Okla., Houston, Tex., and other specified points in Texas to Roxana, Ill.

Grounds for relief: Short-line distance formula and circuitous routes.

Tariffs: Supplement 196 to Agent Kratzmeir's I. C. C. 4109. Supplement 289 to Agent Kratzmeir's I. C. C. 4139.

FSA No. 33239: *Trailer-on-flat-car-service—Between central territory and southwestern territory.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on commodities moving on class and commodity rates loaded in highway trailers and transported on railroad flat cars between specified points in central territory and specified points in southwestern territory, and from specified points in central territory to specified points in southwestern territory.

Grounds for relief: Motor truck competition and circuitous routes.

Tariff: Supplement 18 to Agent Kratzmeir's tariff I. C. C. 4196.

FSA No. 33240: *Caustic soda—Calvert, Ky., to Foley, Fla.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on liquid caustic soda, tank-car loads from Calvert, Ky., to Foley, Fla.

Grounds for relief: Market competition.

Tariff: Supplement 33 to Agent Spaninger's tariff I. C. C. 1548.

FSA No. 33241: *Sulphuric acid between points in western trunk-line territory.* Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on acid, sulphuric, and acid, sulphuric, spent, tank-car loads between points in western trunk line territory, and from Wichita, Kans., to stations in western trunk line territory described in exhibit 2 of the application.

Grounds for relief: Short-line distance formula, motor tank truck competition, and circuitous routes.

Tariff: Supplement 16 to Agent Prueter's tariff I. C. C. A-4164.

FSA No. 33242: *Trailer-on-flat-car-service, Chicago, Ill., to Texas points.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on candy or confectionery, in stated minimum quantities, loaded in highway trailers and transported on railroad flat cars from Chicago, Ill., to Dallas, Fort Worth, Galveston, and Houston, Tex.

Grounds for relief: Short-line distance formula, motor truck competition, and circuitous routes.

Tariff: Supplement 32 to Agent Kratzmeir's tariff I. C. C. 4181.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 57-1006; Filed, Feb. 8, 1957; 8:48 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

TOMMASO RICCARDO LUZZATI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Tommaso Riccardo Luzzati, Siena, Italy, Claim No. 45719, Vesting Order No. 201, property described in Vesting Order No. 201 (8 F. R. 625; January 16, 1943), relating to United States Letters Patent No. 2,252,467.

Executed at Washington, D. C., on February 5, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-1013; Filed, Feb. 8, 1957; 8:49 a. m.]

JOHANNA VAN DER GRAAF

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Johanna van der Graaf, 22 Voorstraat, Lekkerkerk, The Netherlands, Claim No. 59833, Vesting Order No. 17840, $125 in the Treasury of the United States; and 10 shares of 10 cents par value capital stock of Keta Gas and Oil Corporation and 7 shares of $5 par value comon stock of Swan Finch Oil Corporation, presently in the custody of the Federal Reserve Bank, New York, New York.

Executed at Washington, D. C., on February 5, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-1014; Filed, Feb. 8, 1957; 8:49 a. m.]